IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1337

UNIVERSITY OF NEVADA, and the STATE OF NEVADA,

Petitioners,

v.

JOHN MICHAEL HALL, Minor by and Through His Guardian Ad Litem JOHN C. HALL and PATRICIA HALL,

Respondents.

PETITION FOR WRIT OF CERTIORARI
to the Court of Appeal for the State of California First Appellate District Division Four

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To the Court of Appeal for the State of California First Appellate District Division Four

The Petitioners State of Nevada and University of Nevada respectfully pray that a Writ of Certiorari be issued to review the judgment and opinion of the Court of Appeal of the State of California First Appellate District-Division Four, entered in this proceeding on October 24, 1977.

OPINION BELOW

The opinion of the Court of Appeal of the State of California, First Appellate District, Division Four, and the opinion of the California Supreme Court in the case of *Hall v. University of Nevada*, 8 Cal.3rd 522, 503 P.2nd 1363, 105 Cal. Rptr. 355 (1972) cert denied 414 U.S. 820 (1973) upon which the decision of the Court of Appeal of the State of California is primarily based appear in the Appendix hereto.

JURISDICTION

The judgment of the Court of Appeal of the State of California was entered on October 24, 1977. A Petition for hearing in the California Supreme Court was timely filed pursuant to the California Rules of Court. The Petition for Hearing in the California Supreme Court to review the judgment of the Court of Appeal of the State of California was denied on December 22, 1977. This Petition for Certiorari was filed within 90 days of that date. This court's jurisdiction is invoked under 28 U.S.C., §1257 (3).

QUESTIONS PRESENTED

Whether it is constitutionally permissible for a State to ignore the sovereignty of Sister States when such Sister States are performing governmental functions within the boundaries of the forum State.

Whether it is constitutionally permissible for a State, without her consent, to be sued in the courts of a Sister State.

Whether performing governmental functions outside a State's borders strips a State of sovereignty for purposes of the sovereign immunity doctrine.

Whether a State consents to suit in a Sister State's courts by sending employees into the Sister State to perform governmental functions.

Whether, when a state statutorily consents to suit in the courts of her Sister States, the Full Faith and Credit Clause of the United States Constitution requires the courts of the Sister State to recognize and apply any limitations on liability contained in the statutory consent.

STATUTORY PROVISIONS INVOLVED

Nevada Revised Statutes 41.031-41.039 inclusive and specifically Nevada Revised Statutes 41.035. These statutes contain the waiver of sovereign immunity by the State of Nevada and the limitation placed upon liability therein. The statutory provisions are fully set forth in the Appendix.

STATEMENT OF THE CASE

On May 13, 1968 an employee of

the University of Nevada Reno, a governmental arm of the State of Nevada, was involved in a motor vehicle accident in Placer County, California. As a result of the motor vehicle accident a complaint for money damages was filed by respondents in the Superior Court for the County of San Francisco, State of California, on May 12, 1969. It is conceded that at the time of the accident the employee was engaged in official University business and the fact of his agency is not disputed.

Petitioners' motion to quash service of process was granted. Respondents appealed to the District Court of Appeal for the State of California and subsequently to the California Supreme Court. The California Supreme Court, in a decision reported as *Hall v. University of Nevada*, 8 Cal.3rd 522, 503 P.2nd 1363 105 Cal. Rptr. 355 (1972) cert denied 414 U.S. 820 (1973), reversed the lower court's decision and remanded the case to the trial court.

At the trial petitioners moved for an order limiting the amount of damages to the statutory limitation on liability set forth in Section 41.035 of the Nevada Revised Statutes. Petitioners also requested a jury instruction restricting the amount of damages to Nevada's statutory limitation. Petitioners' requests, which were based upon Article 4, Section 1 of the United States Constitution, were denied. At the conclusion of trial respondents

were awarded damages in the amount of One Million One Hundred Fifty Thousand Dollars ($1,150,000).

Following the award of damages petitioners sought, and respondents refused, a stipulation that no execution on the judgment would be taken pending the appeal and review process. This stipulation was necessary due to the fact that Nevada collects sales tax revenue from major corporations doing business in Nevada through said major corporations' regional headquarters within the State of California. *Thus in any given accounting quarter there will be more than sufficient funds to satisfy the judgment from Nevada moneys situated in California banks.* Respondents are aware of the California banks in which the Nevada accounts are situated and *thus it will not be necessary for respondents to sue on the California judgment in the State of Nevada.*[1]

An appeal from the Money Judgment was timely filed with the Court of Appeal of the State of California, First Appellate District, Division Four. A decision adverse to petitioners was

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1/ Decision on the Petition for Certiorari should not proceed on an assumed simple expedient of Nevada having an opportunity to apply her own statutory limitation in an action to enforce the California judgment in Nevada's Courts.

rendered and a request for hearing was timely filed in the California Supreme Court. The California Supreme Court denied hearing and this Petition for Certiorari was filed.

REASONS FOR GRANTING THE WRIT

THE DECISION BELOW INVOLVES A SUBSTANTIAL FEDERAL QUESTION WHICH HAS NOT BEEN DECIDED BY THIS COURT

The salient issue presented is whether a State in the performance of governmental functions may enter the borders of Sister States without being stripped of her sovereignty. This issue, *which is an issue of first impression,* inherently involves the nature of the relationship of the States of the Union to each other.

The California Court of Appeal held that when a State exits her borders she leaves behind every attribute of sovereignty, save one; that one retained attribute being the ability to have judgments rendered against her. In the words of the California court:

> "We have concluded that sister states who engage in activities within California are subject to our laws with respect to those activities and are subject to suit in California courts with respect to those activities. When the sister state enters into activity in this state, it is not exercising

> sovereign power over the citizens of this state and is not entitled to the benefits of the sovereign immunity doctrine as to those activities, unless this state has conferred immunity by law or as a *matter of comity*." Opinion of the California Court of Appeal, Appendix p. iv, quoting the California Supreme Court in the case *Hall v. University of Nevada,* 8 Cal.3rd 522, 524, 503 P.2nd 1363, 105 Cal. Rptr., 355 (1972) cert denied 414 U.S. 820 (1973). (Emphasis added)

The gist of the conclusion of the California Court of Appeal is that the States within the Union are sovereigns only within their own borders and Sister States are free to ignore that sovereignty once a State exits its boundaries. Such a proposition is unalterably opposed to the anvil of federalism upon which the Union of once independent States was forged.

The framers of the Constitution were not unmindful of the need to assure that the several States would not treat each other as independent nations. Indeed, the very purpose of the Full Faith and Credit Clause was to alter the status of the individual States as independent foreign sovereignties, each free to ignore the rights and proceedings of the other and to make each, an integral part of a single nation. *Sherrer v. Sherrer,* 334 U.S. 343, 355 (1978); *Order of United*

Commercial Travelers of America v. Wolfe, 331 U.S. 586, 618, (1947); *Magnolia Petroleum Co. v. Hunt,* 320 U.S. 430, 440 (1943) rehearing denied 321 U.S. 801. The Full Faith and Credit Clause thus substituted a command for the earlier principles of comity and basically altered the status of the States as independent sovereigns. *Estin v. Estin* 334 U.S. 541, 545 (1948).

The question which this Court is requested to resolve is whether the status of the member States were altered in such a manner as to allow a State to retain the vestiges of sovereignty when exiting its borders to perform governmental functions. Conversely, are the individual States free to ignore the sovereignty of Sister States when a Sister State is performing governmental functions outside such Sister State's boundaries. This question involves and necessarily raises sub-issues which are specified below.

TO RESOLVE THE QUESTION OF WHETHER A STATE MAY, WITHOUT HER CONSENT, BE SUED IN A SISTER STATE'S COURTS IN ACTIONS ARISING FROM THE PERFORMANCE OF GOVERNMENTAL FUNCTIONS

It is an established principle of jurisprudence that a sovereign cannot be sued in any court without its consent. *Beers v. Arkansas,* 61 U.S. 527, 529 (1857). As stated by this Court in *Cunningham v. Macon and Brunswick R.R. Co.,* 109 U.S. 446, 451 (1883):

> "It may be accepted as a point of departure unquestioned, that neither a State nor the United States can be sued as defendant in any court in this country without their consent, except in the limited class of cases in which a State may be made a party in the supreme court of the United States by virtue of the original jurisdiction conferred on that court by the constitution."

The decision of the California Court of Appeal is clearly in direct conflict with the axiom that a State may not be sued without its consent in that the California Court of Appeal concluded that Sister States may be sued in California regardless of the existence of consent.[2] The necessity for reviewing such decision is paramount.

To illuminate why a resolution of the question presented is so compelling, one need only consider a few examples of necessary interaction between States. A prime example is an

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2/"After holding that the State and University of Nevada were not immune from suit in California, the Court noted that this conclusion makes 'it unnecessary to consider plaintiff's further contention that the State of Nevada has consented by statute to suit in California'." Opinion of the Court of Appeal Appendix p. iv.

agency operated pursuant to interstate compact where the agency offices are located in one of the States which are parties to the compact. Do the other States to the compact subject themselves to the whim of that State, with respect to possible suits and judgments, by sending employees to the agency office to perform necessary governmental functions? Or what of necessary interaction in the executive branch? Does a State subject itself to the possibility of great financial exposure by sending its Governor or officials to other States to confer with Governors and officials of other States? Indeed, does a State assume the risk that Sister States will bring her to answer in their courts when she sends her attorneys into other States to depose witnesses or even to defend litigation such as this?

That a State should not be subjected to suit without her consent is so basic to the principles of federalism that the Eleventh Amendment was added to the United States Constitution to insure that a State would not be sued in Federal Courts by citizens of Sister States without her consent. Thus the Federal Government, to whom the States specifically and willingly surrendered much of their sovereignty, does not have the power to call a State into her courts, except as specifically consented to in the Constitution. However, if the California Court of Appeal decision is permitted to stand, any State may call

any other State into such State's trial courts upon the whim of citizens of the forum States.

TO RESOLVE THE QUESTION OF WHETHER A STATE CONSENTS TO SUIT BY SENDING EMPLOYEES INTO SISTER STATES TO PERFORM GOVERNMENTAL FUNCTIONS

As set forth above the underlying basis for the decision of the California Court of Appeal was the conclusion that State sovereignty ends at State borders. The Court of Appeal based its holding on the California Supreme Court in *Hall v. University of Nevada*, 8 Cal.3rd 522, 503 P.2nd 1363, 105 Cal. Rptr. 355 (1972) cert denied 414 U.S. 820 (1973) which concluded that when a State enters the borders of a Sister State she consents to being held accountable according to the laws of such Sister State. The principal case relied upon by the California Supreme Court in the earlier *Hall v. University of Nevada* decision was *Parden v. Terminal Railroad of Alabama Docks Dept.*, 377 U.S. 184 (1964). The California Supreme Court's interpretation of this Court's decision in *Parden* was erroneous.

In *Parden, supra* this court based its opinion that Alabama was subject to suit in Federal Court in actions arising out of the operation of an interstate railroad on the fact that Alabama had ratified Article 1, Section 8, Clause 3 of the United States Constitution. In the language of the decision:

"Our conclusion is simply that Alabama, when it began operation of an interstate railroad approximately twenty years after enactment of the FELA, necessarily consented to such suit as was authorized by that Act. By adopting and ratifying the Commerce Clause, the States empowered Congress to create such a right of action against interstate railroads; by enacting the FELA in the exercise of its power, Congress conditioned the right to operate a railroad in interstate commerce upon amenability to suit in Federal Court as provided by the Act; by thereafter operating a railroad in interstate commerce, Alabama must be taken to have accepted that condition and thus to have consented to suit." *Parden v. Terminal Railroad of Alabama Docks Dept., supra,* at 192.

The holding in *Parden* rests upon the fact that by ratifying the Commerce Clause of the United States Constitution and thus affirmatively surrendering a portion of their sovereignty to the Federal Government the States consented to be subject to regulation with respect thereto.

The California court's reliance on *Parden* was clearly misplaced. By ratifying the United States Constitution *the State of Nevada did not consent to*

be subjected to suits in the courts of Sister States. The California court's interpretation of *Parden v. Terminal Railroad of Alabama Docks Dept., supra,* was erroneous and this Court should correct such error.

TO DETERMINE WHETHER WHEN A STATE, BY STATUTE, CONSENTS TO SUIT IN THE COURTS OF SISTER STATES, THE FORUM STATE IS OBLIGATED TO GIVE FULL FAITH AND CREDIT TO ANY LIMITATIONS PLACED ON SUCH CONSENT

As will be fully argued if certiorari is granted, the position of petitioners is that the California courts could have only obtained jurisdiction pursuant to Nevada's statutory waiver of sovereign immunity. It is further the position of petitioners that Article 4, Section 1, of the United States Constitution requires that the liability limit contained in Nevada's statutory waiver by Nevada Revised Statutes 41.035 must be given Full Faith and Credit by the courts of California.

When a State gives statutory consent to be sued it may condition its consent by such modes and terms as it sees fit. *Edelman v. Jordan,* 415 U.S. 651 (1974). Moreover in waiving sovereign immunity a State may prescribe the manner and terms by which suit may be brought. *Great Northern Life Insurance Co. v. Read,* 322 U.S. 47 (1944).

If California's courts acquired jurisdiction over Nevada by Nevada's statutory waiver it necessarily follows that the requirements of Full Faith and Credit mandate that the California courts apply the entire statutory waiver scheme including any limitation on liability contained therein.

CONCLUSION

As set forth above, the position of the State of Nevada is:

(1) States of the Union are required to acknowledge the sovereignty of Sister States when such Sister States are performing governmental functions, either inside or outside their borders;

(2) That a State may not be sued in any court without her consent;

(3) That a State does not consent to suit by sending employees within the borders of Sister States for the purpose of performing governmental functions;

(4) That any jurisdiction vested in the California courts must necessarily have come from the statutory waiver of sovereign immunity by the State of Nevada; and

(5) That when jurisdiction is acquired pursuant to Nevada's statutory waiver of sovereign immunity, the requirements of Full Faith and Credit mandate that the entire statutory waiver scheme be adhered to and that the limitation on liability contained therein be applied.

Petitioners reemphasize *that respondents do not need to sue in the State of Nevada to enforce the California Judgment*. Respondents are aware of the existence of funds sufficient to satisfy the judgment belonging to the State of Nevada which are situated in the State of California. Thus, unless this Court grants this Petition for Certiorari execution will be forthcoming and the State of Nevada will be left without any recourse.

When the State of Nevada entered the Union she agreed to be bound by all laws and judicial decisions thereof. Inherent in this agreement was the understanding that the United States Supreme Court, and not the courts of Sister States, was the final arbiter of decisions which directly affected the States

of the Union insofar as such State's relationship with Sister States were concerned.

Nevada now petitions this Court for Ceriorari which if not granted will leave the State of Nevada with no recourse; with no ability to fight a further legal battle in her own courts; and will place her in an uncertain situation with respect to interaction with her Sister States in the furtherance of the performance of governmental functions. This Court should grant the Petition for Certiorari and thereby fulfill its obligation not only to the State of Nevada but to all the States of the Union.

Dated: March 13, 1978

Respectfully submitted,

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APPENDIX

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT - DIVISION FOUR

JOHN MICHAEL HALL, Minor, by and through his Guardian ad Litem, JOHN C. HALL and PATRICIA HALL, Plaintiffs and Respondents, vs. UNIVERSITY OF NEVADA and the STATE OF NEVADA, Defendants and Appellants.	1 Civil 40858 (Sup. Ct. Nos. 43481 470584-8

Defendants-appellants University of Nevada and the State of Nevada appeal from a judgment in the amount of $1,150,000 entered against them in an action brought by respondents for damages for personal injuries. The injuries resulted from a collision between a vehicle occupied by respondents and one driven by Helmut Bohm. It is conceded that, at the time of the accident, Bohm was an employee of the university, a governmental arm of Nevada, and was engaged in official university business. The fact of his agency was not disputed at trial. The accident occurred in California.

Prior to the trial of the case, appellants moved to quash service of summons on the ground that, under the doctrine of

sovereign immunity, Nevada was not subject to suit in California. That motion was granted. Respondents appealed from the order and in Hall v. University of Nevada (1972) 8 Cal.3d 522, the California Supreme Court reversed, unanimously holding that appellants were not immune from suit in California for the driving of their agent within the scope of his employment or for the permissive use of their car within this state. (Id., at p. 526.) Nevada's petition for writ of certiorari to the United States Supreme Court was denied. (414 U.S. 820.)

The Hall decision notwithstanding, immediately prior to the trial of this case, appellants moved for an order limiting damages to $25,000 per person pursuant to Nevada Revised Statutes section 41.035. That statute, hereafter referred to as NRS 41.035, is part of the legislation by which Nevada has waived its immunity from suit. The waiver, as pertinent herein, is found in the following statutes:

Nevada Revised Statutes section 41.031 provides that "The State of Nevada hereby waives its immunity from liability and action and hereby consents to have its liability determined in accordance with the same rules of law as are applied to civil action against individuals and corporations. . . ."

NRS 41.035 states in relevant part: "No award for damages in an action sounding in tort brought under NRS 41.031 may exceed the sum of $25,000 . . . to or for the benefit of any claimant." The combined

thrust of these statutes is that Nevada has chosen to waive its sovereign immunity, but to limit such waiver to $25,000 per claimant. (See State v. Silva (1971) 86 Nev. 911, 478 P.2d 591.).

Appellants' motion to limit damages was denied by the trial court. The correctness of this ruling is the sole issue on appeal.

Nevada devotes much of its brief to the re-argument of Hall v. University of Nevada, supra, still contending that it cannot be sued in any court without its consent. Such an argument before this court is futile. We are bound by the Supreme Court's ruling that Nevada is not immune from suit. (Auto Equity Sales, Inc. v. Superior Court (1962) 57 Cal. 2d 450,455.)

Appellants' next contention is that, if Nevada is held to be liable in California, that liability must be subject to the $25,000 limit imposed by NRS 41.035. That argument is based on the assumption that in Hall v. University of Nevada, supra, the Supreme Court held that Nevada was subject to suit in this state because it had waived its sovereign immunity. It is argued, in effect, that if California accepts the waiver, it must accept the limitation.

This premise misconceives the point of Hall. The Supreme Court did not hold that Nevada had waived sovereign immunity or had given its implied consent to be sued in California. It held simply that Nevada's sovereign protection does not extend beyond

its borders: "We have concluded that sister states who engage in activities within California are subject to our laws with respect to those activities and are subject to suit in California courts with respect to those activities. When the sister state enters into activities in this state, it is not exercising sovereign power over the citizens of this state and is not entitled to the benefits of the sovereign immunity doctrine as to those activities unless this state has conferred immunity by law or as a matter of comity." (8 Cal.3d at p. 524) The court reviewed developments in the law of sovereign immunity in a foreign jurisdiction and concluded that recent cases "reflect that state sovereignty ends at the state boundary." (Id., at p. 525.) After holding that the state and University of Nevada were not immune from suit in California, the court noted that this conclusion "makes it unnecessary to consider plaintiff's further contention that the State of Nevada has consented by statute to suit in California." (Id., at p. 526.)

That the limitation imposed by NRS 41.035 is totally inapplicable to this case is made clear by footnote 4 of Hall v. University of Nevada, supra, stating: "Plaintiffs urge that Nevada has abrogated sovereign immunity by statute. The state and the university claim that the waiver of immunity was a limited one and that the statutory provisions abrogating immunity should be interpreted as permitting action in the courts of Nevada only. Since we conclude that Nevada does not have immunity from liability for its activities in California, the extent to which Nevada has

waived immunity by statute and the extent, if any, to which it can or has limited the statutory waiver is immaterial. Even if we assume that Nevada limited its statutory waiver of immunity to actions in its courts, such limitation would not be applicable to the instant case involving activities in California because the sovereignty of one state does not extend into the territory of another." (Hall, supra, at p. 526, emphasis added.)

Nevada also attempts to argue that application of NRS 41.035 to the present case is required by the full faith and credit clause of the United States Constitution. The contention is without merit. It is well settled that the purpose of the full faith and credit clause was not to give the statutes of one state extra-territorial force in another. (5 Witkin, Summary of Cal. Law (8th ed. 1974) Constitutional Law, § 16, p. 3260.) The United States Supreme Court has long since established that a forum state may refuse to apply a sister state's statutes where such enforcement would be contrary to its own public policy. (Bradford Elec. Co. v. Clapper (1932) 286 U.S. 145, 160; Pacific Ins. Co. v. Comm'n. (1939) 306 U.S. 493, 501-502.) Nevada must therefore rely on its final argument, namely that California's own conflict of law rules require application of NRS 41.035 in the instant case.

The case of Bernhard v. Harrah's Club (1976) 16 Cal.3d 313 (U.S. cert. den. 429 U.S. 859), presents both the latest definitive statement of California's choice of law rules regarding tort actions and a fact

situation extremely close to the one at bench. In Bernhard, plaintiff, a California resident, was struck on a highway in this state by an automobile driven by another California resident who had allegedly been furnished alcoholic beverages in defendant's Nevada establishment after becoming obviously intoxicated. Plaintiff sought application of California law imposing civil liability upon tavern keepers who furnish liquor to obviously intoxicated persons (Bus. & Prof. Code, § 25602; Vesely v. Sager (1971) 5 Cal.3d 153), while defendant demurred on the ground that Nevada law, precluding such liability, was applicable.

The Supreme Court, noting that it faced a "true conflicts" case, applied the "comparative impairment" test which seeks to determine which state's policy would be more impaired if the other state's law were adopted. (Bernhard, supra, at p. 320.) The court pointed out that California's policy interest would be very significantly impaired if it could not extend its regulation to defendant who, soliciting the patronage of California residents, and knowing and expecting those residents to use California's public highways, could nevertheless, with impunity, violate California's prohibition against selling alcoholic beverages to intoxicated persons. (Id., at pp. 322-323.) The court thus held "that California has an important and abiding interest in applying its rule of decision to the case at bench, that the policy of this state would be more significantly impaired if such rule were not applied and that the trial court erred in not applying California law." (Id., at p. 323.)

In the instant case Nevada advances as its policy, the fact that if its liability were not limited, its residents would suffer financially, due to the increased cost of insurance for Nevada vehicles being operated outside the state. California's policy interest lies in providing full protection to those who are injured on its highways through the negligence of both residents and nonresidents.

We consider the policy reasons for applying California law herein to be even stronger than those found in Bernhard. In Bernhard, defendant's culpable conduct occurred entirely within Nevada's own borders, yet the Supreme Court found that merely by soliciting customers from California, knowing and expecting such customers to use California's highways, defendant had "put itself at the heart of California's regulatory interest. . . ." 16 Cal.3d at p. 322.) Here, the State of Nevada's activities and respondents' resulting injuries, took place within California. By thus utilizing the public highways within our state to conduct its business, Nevada should fully expect to be held accountable under California's laws.

The imposition of unlimited liability upon Nevada involves at most an increased economic exposure which, at least for businesses which actively solicit extensive California patronage, is a foreseeable and coverable business expense. (See Bernhard, supra, 16 Cal.3d at p. 323.)

Given the fact that Nevada has chosen to engage in governmental and business activity in this state, the necessary acquisition of additional insurance coverage to protect itself during such activity is an entirely foreseeable and reasonable expense.

For all the reasons heretofore stated, we conclude that the refusal of the trial court to apply NRS 41.035 was proper.

The judgment is affirmed.

CERTIFIED FOR PUBLICATION

Emerson, J. *

WE CONCUR:

Rattigan, Acting P.J.

Christian, J.

1 Civil 40858

*Retired judge of the superior court sitting under assignment by the Chairperson of the Judicial Council.

Trial Judge:	Honorable Spurgeon Avakian, Judge
Trial Court:	Superior Court, Alameda County
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1 Civil 40858

Hall v. University of Nevada

105 Cal.Rptr. 355

Diane HALL, a minor, etc., et al.,
Plaintiffs and Appellants,

v.

UNIVERSITY OF NEVADA et al.,
Defendants and Respondents.

S.F. 22942.

Supreme Court of California,
In Bank.

Dec. 21, 1972.

Rehearing Denied Jan. 24, 1973.

The Superior Court, City and County of San Francisco, Robert W. Merrill, J., entered order quashing service of summons and complaint, and plaintiffs appealed. The Supreme Court, Peters, J., held that university and sister state were not immune from suit in California for driving of their agent within scope of his employment or for permissive use of their automobile within California.

Order reversed.

Opinion, Cal.App., 102 Cal.Rptr. 67, vacated.

1. States 191(1.7)

Sister states who engage in activities within California are subject to California

laws with respect to those activities and are subject to suit in California courts with respect to those activities and, when sister state enters into activities in California, it is not exercising sovereign powers over citizens of California and is not entitled to benefits of sovereign immunity doctrine as to those activities unless California has conferred immunity by law or as a matter of comity.

2. Courts 12(2)

California and its residents and taxpayers have a substantial interest in providing a forum where a resident may seek whatever redress is due him.

3. Courts 12(2)

California has an interest from point of view of orderly administration of the laws in assuming jurisdiction in cases where most of the evidence is within its borders and where a refusal to take jurisdiction may result in multiple litigation.

4. States 191(1.6,1.7)

University and sister state were not immune from suit in California for driving of their agent within scope of his employment or for permissive use of their automobile within California. West's Ann. Vehicle Code, § 27450 et seq.

Bostwick & Rowe and Everett P. Rowe, San Jose, for plaintiffs and appellants.

Bronson, Bronson & McKinnon, Michael H. Ahrens, Michael R. Sheehan and Paul H. Cyril, San Francisco, for defendants and respondents.

PETERS, Justice.

Plaintiffs appeal from an order quashing service of summons and complaint on the defendants, University of Nevada, a corporation, and the State of Nevada.

Plaintiffs filed suit in the San Francisco Superior Court to recover damages for personal injuries alleging that the injuries resulted from a collison in California between their automobile and a car owned by the University and State of Nevada and operated by their agent acting within the scope of his agency.[1]

Service on the university and the state was made pursuant to section 17450 et seq. of the Vehicle Code which provide a method for service on nonresidents who have operated vehicles on the highways of this state, whose agents have done so, or who have consented to the use of their motor vehicles on our highways. With respect to accidents occurring in the state due to such use, the sections

1. The special administrator of the deceased agent was also named as a defendant.

provide for service on the Director of Motor Vehicles and notice of service to the nonresident by registered mail.

The university and the state moved to quash service on the ground that California Courts do not have jurisdiction over the State of Nevada and its governmental agencies. The motion was granted.

[1] We have concluded that sister states who engage in activities within California are subject to our laws with respect to those activities and are subject to suit in California courts with respect to those activities. When the sister state enters into activities in this state, it is not exercising sovereign power over the citizens of this state and is not entitled to the benefits of the sovereign immunity doctrine as to those activities unless this state has conferred immunity by law or as a matter of comity.

This principle is illustrated by Parden v. Terminal R.Co., 377 U.S. 184, 190 et seq., 84 S.Ct. 1207, 12 L.Ed.2d 233, involving the operation by a state of a railroad in interstate commerce. The court recognized the general rule that a state is immune from suit in federal court by its own citizens and citizens of another state. The court, however, applied an exception to the general rule and held that because it engaged in interstate commerce, the state was subject to the Federal Employers' Liability Act (45 U.S.C. §§ 51-50) and could be sued under

the act in the federal courts. The court, quoting from Maurice v. State of California, 43 Cal.App.2d 270, 275, 277, 110 P.2d 706, held that the state by engaging in interstate commerce by rail and thereby subjecting itself to the federal legislation must be deemed to have waived any right it may have had arising out of the general rule that a sovereign state may not be sued without its consent.[2] (See also California v. Taylor, 353 U.S. 553, 568, 77 S.Ct. 1037, 1 L.Ed.2d 1034; United States v. California, 297 U.S. 175, 185, 56 S.Ct. 421, 80 L.Ed. 567.)

The principle has also been recognized in state decisions relating to other states. Thus, in People v. Streeper (1957) 12 Ill. 2d 204, 145 N.E.2d 625, 629-630, an injunction proceeding was permitted with respect to property owned by one state in another state, and in State v. Holcomb (1911) 85 Kan. 178, 116 P.251, 254, taxation by one state of property therein owned by another state was permitted. Each proceeding was brought in the state where the property was owned. As pointed out in Streeper, the "sovereignty of one State does not extend into the territory of another so as to create immunity from suit or freedom from judicial interference." (145 N.E.2d at p. 629; see also Georgia

2. The dissenting justices in Parden expressly agreed that Congress had the power to condition a state's permit to engage in interstate commerce upon a waiver of sovereign immunity but disputed whether Congress had intended to do so.

v. Chattanooga, 264 U.S. 472, 479, 44 S.Ct. 369, 68 L.Ed. 796; City of Cincinnati v. Commonwealth (1942) 292 Ky. 597, 167 S.W.2d 709, 714; State v. City of Hudson (1950) 231 Minn. 127, 42 N.W.2d 546, 548-549; State ex rel. Anderson v. City of Madison (Mo. 1969) 444 S.W.2d 443, 445; Note, 81 A.L. R. 1518.) Although these cases involve enforcement of property duties rather than in personam jurisdiction and a transitory action, they reflect that state sovereignty ends at the state boundary.

It is urged that as a matter of comity sister states should be immune from liability in California. In Paulus v. State of South Dakota (1924) 52 N.D. 84, 201 N.W. 867, a citizen of South Dakota was injured while working in a mine owned by that state but located in North Dakota. In holding that as a matter of comity the North Dakota courts should not exercise jurisdiction over its sister state, the Supreme Court of North Dakota relied in part on the fact that the plaintiff was a citizen of South Dakota, and to this extent the case is distinguishable because the plaintiffs herein are California citizens. The court also relied upon the potential embarrassment to the states.

Possible embarrassment may not be held controlling when it is weighed against the policies which warrant the exercise of jurisdiction in the instant case. In upholding the validity of a nonresident motorist statute such as the one under which

respondents were served, the United States Supreme Court has pointed out: "Motor vehicles are dangerous machines; and even when skillfully and carefully operated, their use is attended by serious dangers to persons and property. In the public interest the state may make and enforce regulations reasonably calculated to promote care on the part of all, residents and non residents alike, who use its highways. The measure in question operates to require a non resident to answer for his conduct in the state where arise causes of action alleged against him, as well as to provide for a claimant a convenient method by which he may sue to enforce his rights. . . . [T]he state may declare that the use of the highway by the non resident is the equivalent of the appointment of the registrar as agent on whom process may be served." (Hess v. Pawloski, 274 U.S. 352, 356-357, 47 S.Ct. 632, 633, 71 L.Ed. 1091.) The same view has been adopted by the Supreme Court of Nevada in upholding its nonresident motorist statute. (Kroll v. Nevada Industrial Corporation (1948) 65 Nev. 174, 191 P.2d 889, 893.)

[2,3] This court has repeatedly emphasized that this state and its residents and taxpayers have a substantial interest in providing a forum where a resident may seek whatever redress is due him. (Buckeye Boiler Co. v. Superior Court, 71 Cal.2d 893, 899, 906, 80 Cal.Rptr. 113, 4518 P.2d 57; Fisher Governor Co. v. Superior Court, 53 Cal.2d 222, 225, 1 Cal.Rptr. 1, 347 P.2d

1.) The state also has an interest from the point of view of the orderly administration of the laws in assuming jurisdiction in cases where most of the evidence is within its borders and where a refusal to take jurisdiction may result in multiple litigation.[3] (Id.) The presence of the evidence and witnesses in California could, of course, mean that plaintiffs if not permitted to proceed in California could find themselves seriously hampered in proving their case elsewhere.

To hold that the sister state may not be sued in California could result in granting greater immunity to the sister state than the immunity which our citizens have bestowed upon our state government. If a sister state has not abrogated sovereign immunity for tort, it is conceivable that a California citizen would be denied all recovery for an automobile accident in this state even though it the State of Calfiornia had been the defendant recovery would have been permitted.

Finally, it must be pointed out that in a society such as ours, which places such great value on the dignity of the individual and views the government as an instrument to secure individual rights, the doctrine of sovereign immunity

3. Apparently, the instant case is proceeding to trail against the special administrator of the estate of the driver.

must be deemed suspect. (National Bank v. Republic of China, 348 U.S. 356, 359-361, 75 S.Ct. 423, 99 L.Ed. 389; Muskopf v. Corning Hospital Dist. 55 Cal.2d 211, 214-216, 11 Cal.Rptr. 89, 359 P.2d 457.)

[4] We conclude that the State and University of Nevada are not immune from suit in California for the driving of their agent within the scope of his employment or for the permissive use of their car within this state. This conclusion makes it unnecessary to consider plaintiffs' further contention that the State of Nevada has consented by statute to suit in California.[4]

The order appealed from is reversed.

WRIGHT, C. J., and McCOMB, TOBRINER, MOSK, BURKE, and SULLIVAN, JJ., concur.

41.031 Waiver by state, its agencies and political subdivisions of immunity from liability and action; actions; State of Nevada as defendant, service of process.

1. The State of Nevada hereby waives its immunity from liability and action and hereby consents to have its liability determined in accordance with the same rules of law as are applied to civil actions against natural persons and corporations, except as otherwise provided in NRS 41.032 to 41.038, inclusive, and subsection 3 of this section, if the claimant complies with the limitations of NRS 41.032 to 41.036, inclusive, or the limitations of NRS 41.010. The State of Nevada further waives the immunity from liability and action of all political subdivisions of the state, and their liability shall be determined in the same manner, except as otherwise provided in NRS 41.032 to 41.038, inclusive, and subsection 3 of this section, if the claimant complies with the limitations of NRS 41.032 to 41.036, inclusive.

2. An action may be brought under this section, in a court of competent jurisdiction of this state, against the State of Nevada, any agency of the state, or any political subdivision of the state. In an action against the state or any agency of the state, the State of Nevada shall be named as defendant, and the summons and a copy of the complaint shall be served upon the secretary of state.

3. The State of Nevada does not waive its immunity from suit conferred by Amendment XI of the Constitution of the United States.

(Added to NRS by 1965, 1413; A 1975, 209, 421; 1977, 275)

41.032 Conditions and limitations on actions: Officers', employees' acts or omissions. No action may be brought under NRS 41.031 or against an officer or employee of the state or any of its agencies or political subdivisions which is:

1. Based upon an act or omission of an officer or employee, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation is valid, if such statute or regulation has not been declared invalid by a court of competent jurisdiction; or

2. Based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of the state or any of its agencies or political subdivisions or of any officer or employee of any of these, whether or not the discretion involved is abused.

(Added to NRS by 1965, 1413; A 1967, 992; 1977, 1536)

41.033 Conditions and limitations on actions: Failure to inspect, discover. No action may be brought under NRS 41.031 or against an officer or employee of the state or any of its agencies or political subdivisions which is based upon:

1. Failure to inspect any building, structure or vehicle, or to inspect the construction of any street, public highway or other public work to determine any hazards, deficiencies or other matters, whether or not there is a duty to inspect;

2. Failure to discover such hazard, deficiency or other matter, whether or not an inspection is made.

(Added to NRS by 1965, 1413; A 1967, 993; 1977, 1537)

41.0333 Conditions and limitations on actions: Acts, omissions of members, employees of Nevada National Guard. No action may be brought under NRS 41.031 or against the State of Nevada or the Nevada National Guard or a member or employee of the Nevada National Guard which action is based upon an act or omission of the member or employee while engaged in state or federal training of the Nevada National Guard or duty as prescribed by Title 32 of U.S.C., or regulations adopted pursuant thereto, whether such training or duty is performed within or without the boundaries of this state.

(Added to NRS by 1975, 209)

41.0335 Conditions and limitations on actions: Acts, omissions of sheriffs' deputies, police officers.

1. No action may be brought against:

(a) Any sheriff which is based solely upon any act or omission of a deputy; or

(b) A chief of a police department which is based solely upon any act or omission of an officer of such department.

2. Nothing contained in this section shall be construed:

(a) To limit the authority of the state or a political subdivision or a public corporation of the state to bring an action on any bond or insurance policy provided pursuant to law for or on behalf of any person who may be aggrieved or wronged.

(b) To limit or abridge the jurisdiction of any court to render judgment upon any such bond or insurance policy for the benefit of any person so aggrieved or wronged.

(Added to NRS by 1969, 563)

41.0337 Conditions and limitations on actions: Tort actions against present, former public officers, employees, legislators.

1. No tort action arising out of an act or omission within the scope of his public duties or employment may be brought against any officer or employee, or former officer or employee, of the state or of any political subdivision or against any state legislator or former state legislator unless the state or appropriate political subdivision is named a party defendant under NRS 41.031.

2. The attorney general or, in the case of a political subdivision, the political subdivision shall provide for the defense, including the defense of cross-claims and counterclaims, of any officer or employee or former officer or employee of the state or political subdivision or against any state legislator or former state legislator in any civil action brought against such person in his official or individual capacity or both, if the person, within 10 days after a complaint has been filed against him, submits a written request for such defense:

(a) In the case of an elected officer or an agency head who has no administrative superior, to the attorney general or chief legal officer or attorney of the political subdivision; or

(b) In the case of any other officer or employee, to both his agency administrator and the attorney general or the chief legal officer or attorney of the political subdivision,

and the case is certified for such defense. An agency administrator who receives a written request pursuant to this section shall within 15 days after such receipt notify the attorney general or, in the case of an agency administrator of a political subdivision, the chief legal officer or the attorney of the political subdivision, whether it appears that the act or omission of the person was in good faith and in the scope of the person's public duties or employment, and whether he certifies the case for defense. In cases where the written request for defense must be submitted directly to the attorney general or chief legal officer or the attorney of the political subdivision, that officer shall determine within 15 days after receipt of the request whether it appears that the act or omission was in good faith and in the scope of the person's public duties or employment, and whether he certifies the case for defense. If the case is certified for defense, the attorney general or the chief legal officer or attorney of the political subdivision shall within 10 days determine whether his defense of the action would create a conflict of interest between the state or political subdivision and the person.

The initial written request extends the time to answer, move or otherwise plead to the complaint to 45 days after the date of service.

3. The attorney general or the chief legal officer or attorney of the political subdivision shall notify the present or former officer, employee or legislator as promptly as possible of the decision with respect to the defense of his case so that the person may if necessary procure his own counsel and prepare his own defense. Until the decision is made the attorney general or the chief legal officer or attorney of the political subdivision shall appear in the action and move or plead on behalf of the person. Refusal of the state or political subdivision to defend is not admissible in evidence at trial or in any other proceeding.

4. The attorney general may employ special counsel whose compensation shall be fixed by the attorney general, subject to the approval of the state board of examiners, if he determines that it is impracticable, uneconomical or could constitute a conflict of interest for the legal service to be rendered by him or one of his deputies. Compensation for special counsel shall be paid out of the reserve for statutory contingency fund.

5. The chief legal officer or attorney of a political subdivision may employ special counsel whose compensation shall be fixed by the governing body of the political subdivision if he determines that it is impracticable or could constitute a conflict of interest for the legal services to be rendered by him. Compensation for special counsel shall be paid by the political subdivision.

6. If the attorney general or the chief legal officer or attorney of a political subdivision does not provide for the defense of a present or former officer or employee of the state, or political subdivision or of a legislator and it is judicially determined that the injuries arose out of an act or omission of that person during the performance of his duties and within the scope of his employment, and that his act or omission was not wanton or malicious:

(a) If the attorney general was responsible for providing the defense, the state is liable to him for reasonable expenses in prosecuting his own defense, including court costs and attorney's fees. These expenses shall be paid, upon approval by the state board of examiners, from the reserve for statutory contingency fund; or

(b) If the chief legal officer or attorney of a political subdivision was responsible for providing the defense, the political subdivision is liable to him for reasonable expenses in prosecuting his own defense, including court costs and attorney's fees.

7. In every action or proceeding against an officer or employee, or former officer or employee of the state or any political subdivision or against any legislator or former legislator that results in a final judgment or other disposition, the court or jury shall return a special verdict in the form of written findings which determine:

(a) Whether such officer, employee or legislator was acting within the scope of his public duties or employment; and

(b) Whether the alleged act or omission by the officer, employee or legislator was wanton or malicious.

8. The state or appropriate political subdivision may not require a waiver of the attorney-client privilege as a condition of a defense pursuant to this section.

9. The state or appropriate political subdivision shall indemnify the officer, employee or legislator or former officer, employee or legislator unless it establishes that he failed to cooperate in good faith in the defense of the action or that his conduct was wanton or malicious, in which event it is entitled to contribution from such person.

(Added to NRS by 1975, 896; A 1977, 481, 1537)

41.035 Limitation on award for damages in action sounding in tort.

1. An award for damages in an action sounding in tort brought under NRS 41.031 or against a present or former officer or employee of the state or any political subdivision or any state legislator or former state legislator arising out of an act or omission within the scope of his public duties or employment may not exceed the sum of $35,000, exclusive of interest computed from the date of judgment, to or for the benefit of any

claimant. An award may not include any amount as exemplary or punitive damages.

2. The limitations of subsection 1 upon the amount and nature of damages which may be awarded apply also to any action sounding in tort and arising from any recreational activity or recreational use of land or water which is brought against:

(a) Any public or quasi-municipal corporation organized under the laws of this state.

(b) Any person with respect to any land or water leased or otherwise made available by that person to any public agency.

(c) Any Indian tribe, band or community whether or not a fee is charged for such activity or use. The provisions of this paragraph shall not impair or modify any immunity from liability or action existing on February 26, 1968, or arising after February 26, 1968, in favor of any Indian tribe, band or community.

The legislature declares that the purpose of this subsection is to effectuate the public policy of the State of Nevada by encouraging the recreational use of land, lakes, reservoirs and other waters owned or controlled by any public or quasi-municipal agency or corporation of this state, wherever such land or water may be situated.

3. The limitations of subsection 1 upon the amount and nature of damages which may be awarded apply also to any action sounding in tort arising out of any act or omission within the scope of the public duties or employment of any officer or employee, or former officer or employee, of the state or of any political subdivision, or against any state legislator or former state legislator.

(Added to NRS by 1965, 1414; A 1968, 44; 1973, 1532; 1977, 985, 1539)

41.036 Conditions, limitations on actions against state, counties, cities, unincorporated towns, other political subdivisions.

1. No action shall be brought under NRS 41.031 against a county without complying with the requirements of NRS 244.245 to 244.255, inclusive, or against a city without complying with the requirements of NRS 268.020, or against an unincorporated town without complying with the provisions of NRS 269.085, or against the state or any agency or other political subdivision of the state without complying with the requirements of subsection 2 or 3 of this section.

2. Every claim against the state arising out of contract shall be presented in accordance with the provisions of NRS 353.085 or 353.090, and every claim for refund in accordance with the provisions of NRS 353.110 to 353.120, inclusive. Every other claim against the state or any of its agencies shall be presented to the ex officio clerk of the state board of examiners within 6 months from the time the cause of action accrues. He shall within 10 days refer each such claim to the appropriate state agency, office or officer for investigation and report of findings to the board. No action may be brought unless the board refuses to approve or fails within 90 days to act upon the claim.

3. Every claim against any other political subdivision of the state shall be presented, within 6 months from the time the cause of action accrues, to the governing body of that political subdivision. No action may be brought unless the governing body refuses to approve or fails within 90 days to act upon the claim.

(Added to NRS by 1965, 1414; A 1969, 1117)

41.037 Administrative settlement of claims, actions. Upon receiving the report of findings as provided in subsection 2 of NRS 41.036, the state board of examiners may allow and approve any claim or settle any action against the state, any of its agencies or any of its present or former officers, employees or legislators arising under NRS 41.031 to the extent of $25,000, plus interest computed from the date of judgment. Upon approval of any claim by the state board of examiners, the state controller shall draw his warrant for the payment thereof, and the state treasurer shall pay the same from the reserve for statutory contingency fund. The governing body of any political subdivision whose authority to allow and approve claims is not otherwise fixed by statute may allow and approve any claim or settle any action against that subdivision or any of its present or former officers or employees arising under NRS 41.031 to the extent of $25,000, plus interest computed from the date of entry of any judgment, and pay it from any funds appropriated or lawfully available for such purpose.

(Added to NRS by 1965, 1414; A 1973, 1532; 1977, 1539)

41.038 Insurance of state, local government, officers, employees against liability.

1. The state and any local government may:

(a) Insure itself against any liability arising under NRS 41.031.

(b) Insure any of its officers or employees against tort liability resulting from an act or omission in the scope of his employment.

(c) Insure against the expense of defending a claim against itself or any of its officers or employees whether or not liability exists on such claim.

2. Any school district may insure any peace officer, requested to attend any school function, against tort liability resulting from an act or omission in the scope of his employment while attending such function.

3. As used in this section:

(a) "Insure" means to purchase a policy of insurance or establish a self-insurance reserve or fund, or any combination thereof.

(b) "Local government" means every political subdivision and every other governmental entity in this state.

(Added to NRS by 1965, 1414; A 1969, 272, 564; 1977, 388)

41.039 Filing of valid claim against political subdivision condition precedent to commencement of action against employee, officer. An action which is based on the conduct of any employee or appointed or

elected officer of a political subdivision of the State of Nevada while in the course of his employment or in the performance of his official duties may not be filed against such employee or officer unless, prior to the filing of the complaint in such action, a valid claim has been filed, pursuant to NRS 41.031 to 41.038, inclusive, against the political subdivision for which such employee or officer was authorized to act.

(Added to NRS by 1968, 27)

CERTIFICATE OF SERVICE

I, JAMES H. THOMPSON, Chief Deputy Attorney General, hereby certify that on the 20th day of March, 1978, I mailed by first class mail, postage prepaid, three copies to each of the following:

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JAMES H. THOMPSON
Chief Deputy Attorney
General

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1337

UNIVERSITY OF NEVADA, and the
STATE OF NEVADA,

Petitioners,

v.

JOHN MICHAEL HALL, Minor by and Through His Guardian Ad Litem JOHN C. HALL and PATRICIA HALL,

Respondents.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA FIRST APPELLATE DISTRICT DIVISION FOUR

PETITION FOR CERTIORARI FILED MARCH 22, 1978
CERTIORARI GRANTED MAY 30, 1978

APPENDIX INDEX

In the Court of Appeal

State of California

First Appellate District

Division Two

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1 Civ. No. 28689
(Sup.Ct. No. 603599)

DIANE HALL, et al.,

Plaintiffs and Appellants,

vs.

UNIVERSITY OF NEVADA, a corporation, and STATE OF NEVADA,

Defendants and Respondents.

[Filed May 11, 1972]

[Vacated December 21, 1972]

OPINION

We have concluded that, in the absence of express consent to be sued in a foreign jurisdiction, one sovereign state is not subject to the in personam jurisdiction of another. Accordingly, we affirm the trial court's order quashing service of summons and complaint upon respondents University of Nevada and State of Nevada.

Plaintiffs-appellants filed suit in

San Francisco Superior Court to recover damages for personal injuries arising from an accident in California in which their vehicle collided with a car owned by respondents and operated by their agent acting within the scope of his agency. In effecting service of process upon respondents, appellants utilized the California long-arm statute (Veh.Code §§17450-17463) which permits substituted service of summons and complaint upon non-resident motorists.

Appellants concede, as they must, that under the well settled rule neither the state nor any of its agencies enjoying sovereign immunity can be sued unless consent is given to maintain the action against them (Innes v. McColgan (1942) 52 Cal.App.2d 698, 700; McPheeters v. Board of Medical Examiners (1946) 74 Cal.App.2d 46, 49; 45 Cal.Jur.2d, §159, p. 512 et seq.); and that this general prohibition also extends to a tort action brought against the state either in its own courts or those of a sister state (57 Am.Jur.2d, §24, p. 33). They insist, however, that (1) respondents have, by statute, expressly waived immunity, and/or (2) the requisite consent to waive immunity may be given impliedly, and that the operation of the Nevada automobile in California constituted such consent. For the reasons which ensue, we are compelled to reject both contentions.

Appellants' first argument is primarily based on Nevada Revised Statues, section 41.031, which provides in pertinent part that "The State of Nevada hereby waives its immunity from liability and action and hereby consents to have its liability determined in accordance with the same rules of law as are applied to civil actions against individuals and corporations...." (Emphasis added.)

Appellants' reliance on the cited code section is obviously misplaced. It is evident that the present case is not concerned with the extent and conditions of a potential tort liability to which respondents may be subjected in a proper court, but solely with a jurisdictional issue, namely: whether or not respondents have consented to the jurisdiction of the California court. Therefore, the relevant code section is section 13.025, which, at the time of the accident, read as follows:[1]

"1. Except as provided in subsection 2, any action or proceeding against the State of Nevada, shall be brought in a court of competent jurisdiction in Ormsby County.

"2. Any tort action against the State of Nevada which is based on the alleged negligence of a state officer or employee and in which the damages sought to be recovered are for physical injury or death may be brought in a court of competent jurisdiction in the county where the injury occurred." (Emphasis added.)

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[1] In 1969 an act was passed repealing the requirement that actions against the state be brought in Ormsby County. This act, however, brought about only a change that suits against the state can be brought in any county of Nevada, and in no way constituted the required express consent to be sued in other states.

In interpreting the above code section, we adhere to the rule that statutes conferring the right to sue the state, being in derogation of the state's sovereign capacity must be strictly construed (County of Los Angeles v. Riley (1942) 20 Cal.2d 652, 662; Yasunaga v. Stockburger (1941) 43 Cal.App.2d 396, 400-401; 45 Cal.Jur.2d §160, p. 515 et seq.; 57 Am.Jur.2d, §70, p. 80). The statutory language granting consent to such suits must be explicitly and expressly announced (Elizabeth River Tunnel District v. Beecher (1961) 117 S.E.2d 685, 689).

A simple reading of the cited code section persuades us that the statute lacks the required express language to subject respondents to foreign in personam jurisdiction; and, under the foregoing authorities, such jurisdiction may not be established by implication. Our conclusion is further supported by section 228.170(1)[2] of the Nevada Revised Statutes, which specifically requires that suits against the state be brought in Nevada, and by the interpretation of an analogous statute in State Tax Commission v. Kennecott Copper Corp. (1945) 150 F.2d 905 (affd. 327 U.S. 573) where the court held that the statutory phrase of "'any court of competent

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[2] Section 228.170(1) provides that "Whenever the Governor shall direct or in the opinion of the Attorney General to protect and secure the interest of the State, it is necessary that suit be commenced or defended in any court, the Attorney General shall commence such action or make such defense. (2) Such action may be instituted in any district court in the State or in any justice court of the proper county." (Emphasis added.)

jurisdiction'" did not, by implication, include the federal court sitting in the state, because before a state can be subjected to suit "the statute must use language which evidences a clear intent to submit to the jurisdiction of federal courts." (P. 907; emphasis added.)

Additionally, the statutory scheme as a whole leaves no doubt that the emphasized portion of section 13.025 contemplates suits merely within the boundaries of the State of Nevada. This is evidenced by the complete lack of statutory provisions which would set up procedures for out-of-state suits, such as rules for venue, service of process, and other procedural requirements (cf. Ford Co. v. Dept. of Treasury (1945) 323 U.S. 459).

Appellants' second argument is simply an attempt to extend the California long-arm statute.[3]

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[3] The relevant sections of the long-arm statute provide as follows:

"§17451. Service of process on nonresident

"The acceptance by a nonresident of the rights and privileges conferred upon him by this code or any operation by himself or agent of a motor vehicle anywhere within this state, or in the event the nonresident is the owner of a motor vehicle then by the operation of the vehicle anywhere within this state by any person with his express or implied permission, is equivalent to an appointment by the nonresident of the director or his successor in office to be his true and lawful attorney upon whom may be served all lawful processes in any action or proceeding against the nonresident operator or nonresident owner growing out of

While such an argument has a certain appeal to one's sense of logic, is (sic) begs the fundamental question, i.e., whether one state may legislate away the sovereignty of a sister state.

Clearly it may not, for, as we have seen, state sovereignty may be waived only by a clear and unambiguous statutory enactment of the state Legislature concerned which directs the conditions, mode and manner of the purported waiver (Ford Co. v. Dept. of Treasury, supra; State of California v. Superior Court (1936) 14 Cal.App. 2d 718, 722-723; 81 C.J.S., §214, p. 1304).

Appellants' reliance on People v. Streeper (1957) 145 N.E.2d 625 and State v. Holcomb (1911) 116 P. 25[illegible] is patently misplaced. In each of those cases the dispute revolved around and concerned

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any accident or collision resulting from the operation of any motor vehicle anywhere within this state by himself or agent, which appointment shall also be irrevocable and binding upon his executor or administrator.

"§17453. Agreement on validity of process

"The acceptance of rights and privileges under this code or any operation of a motor vehicle anywhere within this state as specified in Section 17451 shall be a signification of the irrevocable agreement of the nonresident, binding as well upon his executor or administrator, that process against him which is served in the manner provided in this article shall be of the same legal force and validity as if served on him personally in this state."

property located in the forum state (in Streeper injunctive relief was asked, while Holcomb involved the state taxation of property); and in each case the court simply adhered to the long-established principle that a state has in rem jurisdiction over the property located in its territory. In People v. Streeper, supra, the court was eager to point out that where the property of another state is properly before the court, the court will proceed to discharge its duty concerning the property but the state may not be compelled to come in as a party. (Pp. 630-631.)

Although no exact case has been presented to us nor have we found any, the closest in point is Paulus v. State of South Dakota (1924) 201 N.W. 867. In that case defendant South Dakota owned and operated a coal mine in North Dakota. Plaintiff, a mine employee, suffered personal injuries and sued South Dakota in the court of North Dakota, contending that, by owning and operating the coal mine in North Dakota, defendant South Dakota impliedly waived its sovereignty and thereby consented to the jurisdiction of North Dakota.

Concluding that South Dakota could not, without its express consent, be sued in North Dakota, the court held that considerations of comity impelled it to refrain from exercising jurisdiction. The same considerations apply to the case at bar.

The order is affirmed.

Certified for Publication

Kane, J.

We concur:
Taylor, P. J.
Rouse, J.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

DIANE HALL, JOHN M. HALL, JOYCE HALL, et al., Plaintiffs, v. MATTHEW M. FISHGOLD, as Administrator of the ESTATE OF HELMUT KURT BOHM, deceased, Defendants.	DEFENDANTS UNIVERSITY OF NEVADA'S AND STATE OF NEVADA'S RESPONSES TO PLAINTIFFS' REQUESTS FOR ADMISSION OF FACTS (SET ONE -- AMENDED)
DIANE HALL, JOHN M. HALL, JOYCE HALL, et al., Plaintiffs, v. UNIVERSITY OF NEVADA, et al., Defendants.	Nos. 433481 & 470584-8 (CONSOLIDATED)

Responses are made by defendants UNIVERSITY OF NEVADA and STATE OF NEVADA to plaintiffs' Requests for Admission of Facts (Set One -- Amended) as follows:

1. On the 13th day of May, 1968, HELMUT KURT BOHM was an employee of the UNIVERSITY OF NEVADA.

RESPONSE: Admitted.

2. That HELMUT KURT BOHM was on the 13th day of May, 1968, a technical assistant in the Anatomy department of the UNIVERSITY OF NEVADA.

RESPONSE: It is admitted that Mr. Bohm was, on the 13th day of May, 1968, employed in the Anatomy Department of the University of Nevada in a position in the nature of a curator. All else is denied.

3. That on the 13th day of May, 1968, HELMUT KURT BOHM obtained a 1968 Chevrolet automobile, bearing license number (E) 781 Nevada from the UNIVERSITY OF NEVADA Motor Pool.

RESPONSE: Admitted.

4. That said vehicle was obtained by HELMUT KURT BOHM through a requisition from the Anatomy Department of the UNIVERSITY OF NEVADA.

RESPONSE: Admitted.

5. That on the 13th day of May, 1968, HELMUT KURT BOHM used the above described 1968 Chevrolet to drive to Sacramento, having been directed in connection with his employment at the UNIVERSITY OF NEVADA, to go to Sacramento to pick up some television parts for the UNIVERSITY.

RESPONSE: It is admitted that on the 13th day of May, 1968, HELMUT KURT BOHM used the above described 1968 Chevrolet to drive to Sacramento, having been given

permission in connection with his employment at the UNIVERSITY OF NEVADA, to go to Sacramento to pick up some television parts for the UNIVERSITY.

6. That on the 13th day of May, 1968, at the time the accident occurred which is the subject of this suit, HELMUT KURT BOHM was returning to Nevada in the 1968 Chevrolet owned by the UNIVERSITY OF NEVADA after having gone to Sacramento to pick up the television parts for the UNIVERSITY.

RESPONSE: Admitted.

7. That at the time of the accident HELMUT KURT BOHM was acting in the course and scope of his employment for the UNIVERSITY OF NEVADA.

RESPONSE: Admitted.

8. That at the time of the accident herein in question HELMUT KURT BOHM was operating the 1968 Chevrolet owned by the UNIVERSITY OF NEVADA with the permission of the UNIVERSITY OF NEVADA.

RESPONSE: Admitted.

9. That on the 13th day of May, 1968, HELMUT KURT BOHM operated the 1968 Chevrolet automobile owned by the UNIVERSITY OF NEVADA on Interstate 80 at a point approximately 300 feet East of Penryn Rock Springs Road in the County of Placer, State of California, in a negligent and careless manner and as a direct and proximate cause of such negligent operation of said vehicle the vehicle struck the automobile in which the plaintiffs were riding causing injuries to them.

RESPONSE: Denied.

DATED: December _____, 1975.

BRONSON, BRONSON & McKINNON

By Ernest B. Lageson
Ernest B. Lageson
Attorneys for Defendants,
UNIVERSITY OF NEVADA, STATE
OF NEVADA, et al.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF PLACER

DIANE HALL, JOHN M. HALL, JOYCE HALL, minors, by and through their Guardian ad Litem, JOHN C. HALL; JOHN C. HALL, PATRICIA HALL, and ELLA WATSON, individually, Plaintiffs, vs. MATTHEW M. FISHGOLD, as Administrator of the Estate of Helmut Kurt Bohm, Deceased; et al., Defendants.	No. 38505 ORDER CHANGING PLACE OF TRIAL AND TRANSFERRING ACTION TO PROPER COURT IN ANOTHER COUNTY

The motion of plaintiffs for an order changing the place of trial of this action on the ground the convenience of witnesses and the ends of justice would be promoted by the change came on regularly for hearing by the Court on the 22 day of January, 1973. Plaintiffs appeared by counsel Everett P. Rowe, Esq. of the Law Offices of Bostwick & Rowe; defendant appeared by counsel of Law Offices of Bronson, Bronson & McKinnon and by Kern E. Tindall, Esq.

The Court, having considered the declarations under penalty of perjury and other documents in support of and in opposition to the motion, having heard the

arguments of counsel, and being fully advised in the premises, finds as follows:

1. The convenience of witnesses and the ends of justice would be promoted by the change of the place of trial of the action.

The motion ought to be granted.

IT IS ORDERED as follows:

1. The motion is granted, the place of trial of this action is changed from the Superior Court in and for the County of Placer, and the action is transferred to the Superior Court in and for the County of Alameda.

2. Upon payment of the costs and fees, the clerk of this court transfer to the clerk of the court to which the action is ordered transferred all of the pleadings and papers on file relating to the action, together with a certified copy of this order.

3. The costs and fees of such transfer, and of filing the papers anew, be paid by plaintiffs.

DATED: Feb. 27, 1973

RONALD G. CAMERON
JUDGE OF THE SUPERIOR COURT

CERTIFICATE OF SERVICE

I, JAMES H. THOMPSON, Chief Deputy Attorney General, hereby certify that on the 14th day of July, 1978, I mailed by first class mail, postage prepaid, three copies to each of the following:

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Chief Deputy Attorney
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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1977

No. 77-1337

UNIVERSITY OF NEVADA and the STATE OF NEVADA,
Petitioners,

vs.

JOHN MICHAEL HALL, Minor by and through his Guardian Ad Litem John C. Hall
and PATRICIA HALL,
Respondents.

On Petition for Writ of Certiorari to the Court of Appeal for the State of California, First Appellate District, Division Four

BRIEF FOR RESPONDENTS IN OPPOSITION

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On Petition for Writ of Certiorari to the Court of Appeal for the State of California, First Appellate District, Division Four

BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the California Supreme Court is reported as *Hall v. University of Nevada,* 8 Cal.3d 522, 503 P.2d 1363, 105 Cal.Rptr. 355 (1972).

Petitioners herein previously filed a Petition for Certiorari with this Court which was denied 414 U.S. 820 (1973). Contemporaneously Petitioners filed

a Motion for Leave to File Complaint. This was also denied.

After trial in Alameda County, a judgment was entered in favor of Respondents. Petitioners then appealed again to the Court of Appeal. 74 C.A.3d 280 (1977). Petitioners then filed a Petition for Rehearing in the Supreme Court of California which was denied on December 22, 1977.

PETITIONER'S CLAIM OF JURISDICTION

The only basis for jurisdiction of this Court claimed by the petitioners is 28 U.S.C. 1257(3) (page 2 of Petition). No other ground for invoking this Court's jurisdiction is given. A reading of the opinions of the California Courts and the previous Petition for Writ of Certiorari filed with this Court in 1973 demonstrates that:

(1) The validity of a treaty or statute of the United States is not drawn in question.

(2) No State statute is drawn in question on the ground of it being repugnant to the Constitution treaties or laws of the United States.

(3) No "title, right, privilege or immunity is specially set up or claimed under the Constitution, or statutes of the United States". Such a claim can only be made by citizens of the United States. The judgment against the Estate of the employee of the University of Nevada was not appealed.

QUESTIONS PRESENTED

Does the sovereignty of the State of Nevada extend into the State of California?

When the State of Nevada engages in activities within the State of California is it subject to the laws of the State of California with respect to those activities?

Does the State of California waive all of its sovereign powers by reason of any claimed immunity on the part of the State of Nevada?

When Nevada enters into activities in the State of California is it entitled to the benefits of the sovereign immunity doctrine as to those activities unless the State of California has conferred immunity by law or as a matter of comity?

Can the laws enacted by the Nevada legislature be given extraterritorial effect to regulate activities of the State of Nevada in the State of California?

STATUTORY PROVISIONS INVOLVED

Petitioners assert that Nevada Revised Statutes 41.031-039 should be given extraterritorial effect and govern the rights of California residents with reference to automobile accidents occurring in the State of California.

Neither the Supreme Court of California nor the decision of the Court of Appeal drew into question the validity of the Nevada statutes on the ground that they were repugnant to the Constitution of the United States.

STATEMENT OF THE CASE

On May 13, 1968, the plaintiffs John Michael Hall, a minor child, and his mother were in an antomobile on a California highway in Placer County. The driver of the other vehicle involved in the collision drove across a dividing strip and collided head-on with the plaintiffs' vehicle. John Michael Hall, a minor child, sustained severe head injuries resulting in permanent brain injuries which have left him severely retarded and unable to care for himself or to ever be able to earn a livelihood. His mother, Patricia Hall, sustained severe physical injuries and severe emotional injuries requiring the care and treatment of psychiatrists.

The automobile which caused these injuries was a chattel owned by the State of Nevada and this chattel was voluntarily brought into the State of California by an employee of the University of Nevada. The driver of the automobile owned by the State of Nevada was killed in the accident. An estate proceeding was commenced for the deceased employee in the State of California and an Administrator of the Estate, a resident of California, was appointed in the State of California. The plaintiffs filed suit against the Administrator of the estate of the deceased employee, the University of Nevada and the State of Nevada. Service of process on the State of Nevada and the University was accomplished under the long arm provision of the Motor Vehicle Code of the State of California (California Vehicle Code Sections 17450-17463).

Service of process on the Administrator was by personal service of the Summons and Complaint in California. The Supreme Court of the State of California in *Hall v. University of Nevada,* 8 Cal.3d 522, 503 P.2d 1363, 105 Cal.Rptr. 355 (1972) *cert. denied* 414 U.S. 820 (1973) denied the motion to quash service filed by the defendants State of Nevada and University of Nevada.

The State of Nevada also filed a Motion for Leave to File Complaint with the Supreme Court of the United States which was also denied by this Court.

A trial of the action took place in Alameda County and at the trial of the action the petitioners herein moved for an Order restricting the amount of damages to Twenty-five Thousand Dollars ($25,000.00) and for an instruction to the jury that they could only award Twenty-five Thousand Dollars ($25,000.00) per person. Both requests were claimed to be based on Article IV, Section 1 of the United States Constitution and were denied by the Trial Court. A verdict in favor of respondents herein was returned against the Petitioners and against the Administrator of the Estate of the employee. Petitioners appealed to the Court of Appeal of the State of California. As the Court of Appeal carefully pointed out:

> "Appellants motion to limit damages was denied by the Trial Court. The correctness of this ruling is the sole issue on appeal."

Petitioners herein did not file a Petition for Rehearing in the Court of Appeal to correct any mis-

statement of facts and are, under California law, bound by the narrow issue of appeal as described by the Court of Appeal (cite Rule 29(b)).

The verdict of the jury was against the petitioners herein and the Administrator of the estate of the deceased employee of the University of Nevada. The petitioners herein admitted that the deceased employee was in the course and scope of his employment at the time the accident occurred and are not disputing that their employee was negligent and that his negligence was a proximate cause of the injuries sustained by the respondents herein. However, no appeal was filed on behalf of the deceased employee and the judgment is now final, nor is any claim made that the Courts of the State of California did not acquire jurisdiction over said employee by service of process in the State of California as the Administrator of the estate of the deceased employee.

Petitioners filed a Petition for Hearing before the Supreme Court of the State of California which was denied.

ARGUMENT

I

THE PETITION FAILS TO ALLEGE ANY FACTS WHICH WOULD INVOLVE THIS COURT'S JURISDICTION UNDER 28 U.S.C. §1257(3).

The petitioners seek jurisdiction of this Court under 28 U.S.C. §1257(3); however, none of the conditions of that statute are set forth in the petition.

The only statutory provision involved, according to the Petition are Nevada Revised Statutes 41.031-41.039. However, a reading of the opinions of the California Supreme Court and of the Appellate Court does not demonstrate that these opinions asserted that the Nevada Statutes were repugnant to the Constitution of the United States.

II

THE PETITION FAILS TO SET FORTH ANY FEDERAL QUESTION

The United States Supreme Court will not review judgments of State Courts that rest on adequate independent State grounds (*Dixon v. Duffy* (Cal. 1951) 72 S.Ct. 10, 342 U.S. 33, 96 L.Ed. 46).

The United States Supreme Court will not review decisions which rest upon adequate non-federal grounds. *Young v. Razen* (Ill. 1949) 69 S.Ct. 1073, 337 U.S. 235, 93 L.Ed. 1333. The California Courts' opinions are sustainable on California's own conflict of laws and choice of law rules.

III

ARTICLE IV, SECTION 1 OF THE UNITED STATES CONSTITUTION (FULL FAITH AND CREDIT CLAUSE) DOES NOT REQUIRE CALIFORNIA TO APPLY NEVADA'S STATUTES.

Petitioners present a "tunnel vision" approach to the concept of sovereignty of the States of the Union and of the application of the Full Faith and Credit

Clause of the Constitution. In their eyes Nevada is the only sovereign state that can exercise sovereign powers. In their limited vision of the concept of Full Faith and Credit they overlook the fact that Nevada is, under that doctrine, required to give full faith and credit to the California laws as well as the California judgments. It is well settled that the purpose of the full faith and credit clause was not to give the statutes of one state extraterritorial effect in another state (5 Witkin, *Summary of California Law* (8th Ed. 1974) Constitutional Law §16, p. 3260).

The United States Supreme Court has established that a forum state may refuse to apply a sister state's statutes where such enforcement would be contrary to its own public policy (*Bradford Electric Co. v. Clapper* (1932) 286 U.S. 145, 160. *Pacific Emp. Insurance Co. v. Comm'n* (1939) 306 U.S. 493, 501-502).

The Court of Appeal of California correctly stated the law (Petitioners' Appendix v):

> "Nevada must therefore rely on its final argument, namely that California's own conflict of laws rules require application of NRS 41.035 in the instant case" (*Hall v. Nevada,* 74 C.A.3d 280 (1977)).

The Court ruled that under California's conflict of laws rules the Nevada statute would not be applied.

Petitioners, in their Petition for Writ of Certiorari at pages 7 and 8, state that:

> "The framers of the Constitution were not unmindful of the need to assure that the several states would not treat each other as independent nations. Indeed, the very purpose of the Full Faith and Credit Clause was to alter the status of the individual states as independent sovereignties, each free to ignore the rights and proceedings of the other and to make each, an integral part of a single nation."

citing cases of this Court.

One of the cases cited by petitioner is *Magnolia Petroleum Company v. Hunt,* 320 U.S. 430 (1943).

The opinion in that case states at page 436:

> ". . . Since each of the states of the Union has constitutional authority to make its own law with respect to persons and events within its borders, the full faith and credit clause does not ordinarily require it to substitute for its own law the conflicting law of another state, even though that law is of controlling force in the Courts of that state with respect to the same persons and events". (Citing cases).

The State of California, therefore, has the Constitutional authority to make its own laws with respect to persons and events within its borders.

IV

THE EFFECT OF THE FULL FAITH AND CREDIT CLAUSE IS TO RESTRICT THE APPLICATION OF THE DOCTRINE OF SOVEREIGN IMMUNITY WHEN A STATE IS CONDUCTING ACTIVITIES WITHIN THE BOUNDARIES OF ANOTHER STATE.

This Court has held that the Full Faith and Credit Clause basically altered the status of states as independent sovereigns, *Estin v. Estin,* 334 U.S. 541, 545, 546. The doctrine of sovereign immunity is a doctrine which arose out of the Common Law. Any immunity of each state from suit is not set forth in the Constitution of the United States. The Eleventh Amendment to the Constitution of the United States only relates to the competency of the Federal Courts to render a judgment against a non-consenting state.

The doctrine of sovereign immunity has been held by this Court to be applicable to the states because of the inherent nature of sovereignty.

The California Supreme Court in *Hall v. University of Nevada* (Petitioners' Appendix xiii) stated:

> "We have concluded that sister states who engage in activities within California are subject to our laws with respect to those activities and are subject to suit in California Courts with respect to those activities when the sister state enters into activities in this state. It is not exercising sovereign power over the citizens of this state and is not entitled to the benefits of the sovereign immunity doctrine as to those activities unless this state has conferred immunity by law or as a matter of comity."

The decision is not based upon any abolition of the doctrine of sovereign immunity but on the principle that there are limitations on the territorial extent of sovereignty. The immunity of a sovereign cannot extend beyond the territorial limits of the sovereign. The governments of the states are only sovereign within their territorial limits (*Parker v. Brown*, 317 U.S. 341 at page 359). Conversely the jurisdiction of a state does not ordinarily extend beyond its boundaries (*State v. Hudson,* 231 Minn. 127, 42 N.W.2d 546).

The opinion of the Supreme Court in *Hall v. Nevada, supra,* gave examples of instances where the State was not acting "Wholly within its own sphere of authority" (*Parden v. Terminal Railroad Company,* 377 U.S. 184, at page 196).

Petitioners attack the opinion of the California Court on the ground that cases cited do not support the opinion. The California Supreme Court did not cite the *Parden* case as authority but merely as an example of the sphere of authority test. The other cases cited by the Court again were cited as examples of the principle that "sovereignty of one state does not extend into the territory of another so as to create immunity from suit" (see cases cited in opinion xiv, xv of Petitioners' Appendix).

V

NEVADA CONSENTED TO SUIT IN THE STATE OF CALIFORNIA

As pointed out in the decision of the California Supreme Court, *Hall v. University of Nevada,* at page ix of Petitioners' Appendix, the State may declare that the use of the highway by the non-resident is the equivalent of the appointment of the registrar as agent on whom process may be served (*Hess v. Pawloski,* 274 U.S. 352; *Kroll v. Nevada Industrial Corp.* (1948) 65 Nev. 174, 191 P.2d 889, 893).

Section 13.025 of the Nevada Revised Statutes also also provided at the time the accident occurred that

> "any tort action against the State of Nevada which is based on the alleged negligence of a state officer or employee and in which the damages sought to be recovered are for physical injury or death, may be brought in a Court of competent jurisdiction in the county where the actual injury occurred." (Appendix).

CONCLUSION

The petition should be denied. The petitioners have failed to set forth sufficient grounds for this Court to entertain this petition and this Court should, as it did in the previous applications, deny the petition.

The petitioners seek an expansion of the sovereign power of the State of Nevada into the State of California and refuse to accept the rights of the State of

California to regulate its highways and to protect its citizens from injuries sustained as a result of negligent operation of motor vehicles in California.

The State of California clearly obtained jurisdiction over the driver-employee of the automobile owned by the State of Nevada by serving Summons and Complaint on the California administrator of his estate proceeding commenced in California. California clearly obtained jurisdiction over the State of Nevada and the University of Nevada through its long arm motor vehicle statutes.

Dated: May 4, 1978.

Respectfully submitted,
EVERETT P. ROWE,
BOSTWICK AND ROWE, INC.,
TUNNEY, CARLYLE, ROGERS
AND VANASSE,
Attorneys for Respondents.

(Appendix Follows)

APPENDIX

Section 13.025 of the Nevada Revised Statutes provides:

"Venue of actions against the State of Nevada.

(1) Except as provided in subsection 2, any action or proceeding against the State of Nevada shall be brought in a court of competent jurisdiction in Ormsby County.

(2) Any tort action against the State of Nevada which is based on the alleged negligence of a State officer or employee and in which the damages sought to be recovered are for physical injury or death may be brought in a court of competent jurisdiction in the county where the actual injury occurred."

IN THE

Supreme Court of the United States

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Respondents.

BRIEF OF PETITIONER

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT DIVISION FOUR

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IN THE SUPREME COURT OF THE

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BRIEF OF PETITIONERS

ON WRIT OF CERTIORARI TO THE COURT OF
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JOHN C. HALL and PATRICIA HALL,

Respondents.

BRIEF OF PETITIONERS

OPINION BELOW

The Writ of Certiorari is addressed to the California Court of Appeal, First Appellate District, Division Four, to review the opinion of that Court which, is reported as 74 Cal. App. 3rd 280 (1977) and is set forth in full in the Appendix to the Petition for Certiorari.

JURISDICTION

The judgment of the Court of Appeal

of the State of California was entered on October 24, 1977. A Petition for Hearing in the California Supreme Court to review the judgment of the Court of Appeal was timely filed pursuant to the California Rules of Court. The Petition for Hearing was denied on December 22, 1977. A Petition for Certiorari was filed on March 22, 1978, invoking this Court's jurisdiction under 28 U.S.C. §1257(3). Certiorari was granted on May 30, 1978.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Article IV, Section 1.

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

United States Constitution, Amendment X:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

United States Constitution, Amendment XI:

> "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Nevada Revised Statute 13.025, enacted as Statutes of Nevada, 1967, p.720, repealed by Statutes of Nevada, 1969, p.67:

> "(1) Except as provided in subsection 2, any action or proceeding against the State of Nevada shall be brought in a court of competent jurisdiction in Ormsby County.
>
> (2) Any tort action against the State of Nevada which is based on the alleged negligence of a state officer or employee and in which the damages sought to be recovered are for physical injury or death may be brought in a court of competent jurisdiction in the county where the injury

occurred."

Nevada Revised Statutes 41.031, found in official edition, Statutes of Nevada, 1965, p.1413, as amended by Statutes of Nevada, 1975, 209, 421 and Statutes of Nevada 1977, 275:

> "1. The State of Nevada hereby waives its immunity from liability and action and hereby consents to have its liability determined in accordance with the same rules of law as are applied to civil actions against natural persons and corporations, except as otherwise provided in NRS 41.032 to 41.038, inclusive, and subsection 3 of this section, if the claimant complies with the limitations of NRS 41.032 to 41.036, inclusive, or the limitations of NRS 41.010. The State of Nevada further waives the immunity from liability and action of all political subdivisions of the state, and their liability shall be determined in the same manner, except as otherwise provided in NRS 41.032 to 41.038, inclusive, and subsection 3 of this section, if the claimant complies with the limitations of NRS 41.032 to

41.036, inclusive.

> 2. An action may be brought under this section, in a court of competent jurisdiction of this state, against the State of Nevada, any agency of the state, or any political subdivision of the state. In an action against the state or any agency of the state, the State of Nevada shall be named as defendant, and the summons and a copy of the complaint shall be served upon the secretary of state.
>
> 3. The State of Nevada does not waive its immunity from suit conferred by Amendment XI of the Constitution of the United States."

Nevada Revised Statutes 41.035(1) as it existed in 1968, found in official edition, Statutes of Nevada 1965, p.1414, [later amended by Statutes of Nevada 1968, p.44, Statutes of Nevada 1973, 1532, and Statutes of Nevada 1977, 985, 1539]:

> "1. No award for damages in an action sounding in tort brought under NRS 41.031 may exceed the sum of $25,000 to or for the benefit of any claimant.

No such award may include any amount as exemplary or punitive damages or as interest prior to judgment. [Subsequent amendments extended personal immunity to legislators, officials and employees engaged in official duties and activities, and increased the liability limit to $35,000.]

QUESTIONS PRESENTED FOR REVIEW

Whether unconsenting states are subject to tort actions by individuals in the courts of sister states.

Whether performing governmental functions outside a state's border strips a state of sovereignty for purposes of the sovereign immunity doctrine.

Whether the states have consented to be subject to tort actions in the courts of sister states when they send employees into such sister states to perform governmental functions.

Whether, when a state statutorily consents to suit, and the courts of a sister state obtain jurisdiction thereby, the courts of the sister state are required to recognize and apply any limitations on liability contained in the statutory consent.

STATEMENT OF THE CASE

On May 13, 1968, an employee of the University of Nevada Reno, a governmental arm of the State of Nevada, was involved in a motor vehicle accident in Placer County, California. The employee's presence in the State of California was related to the educational activities of the University of Nevada. It was conceded that at the time of the accident the employee was engaged in official University business and the fact of his agency is not disputed.

As a result of the motor vehicle accident a complaint for money damages was filed by respondents in the Superior Court for the County of San Francisco, State of California, on May 12, 1969 (R.97). Petitioners' successfully quashed service of process and respondents appealed to the District Court of Appeal for the State of California and subsequently to the California Supreme Court (R.113, 133). The California Supreme Court, in a decision reported as *Hall v. University of Nevada*, 8 Cal.3rd 522, 503 P.2nd 1363 105 Cal. Rptr. 355 (1972) cert. denied 414 U.S. 820 (1973), reversed the lower court's decision and remanded the case to the trial court (R.147, A. to Pet. for Cert. p.x). In reversing, the California Supreme Court specifically held that Sister States were possessed of no immunity when engaged in governmental activities in California.

At the trial petitioners moved for an order limiting the amount of damages

to the statutory limitation on liability set forth in Section 41.035(1) of the Nevada Revised Statutes (R.156). Petitioners also requested a jury instruction restricting the amount of damages to Nevada's statutory limitation (R.85). Petitioners' requests, which were based upon Article 4, Section 1 of the United States Constitution, were denied. At the conclusion of trial respondents were awarded damages in the amount of One Million One Hundred Fifty Thousand Dollars ($1,150,000) (R.90,91).

An appeal from the Money Judgment was timely filed with the Court of Appeal of the State of California, First Appellate District, Division Four. The California Court of Appeal upheld the trial judgment; the California Supreme Court denied petitioners' request for hearing, thereby refusing to review the correctness of the Court of Appeal opinion. Certiorari was then petitioned for and granted.

SUMMARY OF ARGUMENT

The principle that a state may not be sued in any court without its consent is firmly established. It is likewise axiomatic that adoption of the Constitution affected the states' immunity from unconsenting suit only with respect to the consent expressly granted and the power specifically extended to the Federal government. The power to be free from tort actions in the courts of sister states was not a power surrendered in the Constitution and was thus reserved to the States.

The conclusion of the California Court of Appeal that sister states were not immune from suit in California was patently erroneous. The States enjoyed such necessary immunity at the time the Union was formed and that immunity was reserved to the States by the Tenth Amendment to the Constitution. Nor may a state apply the Law of Nations and determine to abrogate the immunity of sister states. Such a proposition is prohibited by the unifying character of the Full Faith and Credit Clause.

If the courts of California were indeed possessed of jurisdiction over the State of Nevada, such jurisdiction could only exist pursuant to Nevada's statutory waiver of sovereign immunity. When consent to suit is granted a state may place such conditions and limitations on that consent as she sees fit. Nevada's consent was limited to the courts of Nevada and the exercise of jurisdiction by the California courts was thus erroneous. However, even if jurisdiction did exist, such jurisdiction was limited by the limitation on liability in Nevada's statutory waiver and the California courts erred in not applying such limitation as they were mandated to do by the requirements of Full Faith and Credit.

ARGUMENT AND CITATION OF AUTHORITY

I. A STATE MAY NOT BE SUED WITHOUT HER CONSENT.

The California Court of Appeal,

following the decision of the California Supreme Court in *Hall v. University of Nevada*, 8 Cal.3rd 522, 503 P.2d 1363, (1972) cert. denied 414 U.S. 820 (1973), held that the State of Nevada was not immune from suit in California courts. The court *did not* hold that Nevada had waived sovereign immunity or had given its implied consent to be sued in California but rather that "Nevada's sovereign protection does not extend beyond its borders". Such a conclusion is diametrically opposed to all established legal principle and precedent.

It is an established principle of jurisprudence that a sovereign cannot be sued in any court without its permission. *Beers v. Arkansas*, 61 U.S. 527, 529 (1857). This principle has full applicability with respect to the States of the Union. *Hans v. Louisiana*, 134 U.S. 1, 15 (1890). In the words of this Court:

> "It may be accepted as a point of departure, unquestioned, that neither a state, nor the United States can be sued as defendant in any court in this Country without their consent, except in that limited class of cases in which a state may be made a party by virtue of the original jurisdiction conferred on that court by the Constitution." *Cunningham v. Macon & B. R. Co.*, 109

U.S. 446, 451 (1883).

The holding of *Cunningham, supra*, has been consistently followed and never overruled. *Stanley v. Schwalby*, 147 U.S. 508, 518 (1893); *Smith v. Reeves*, 178 U.S. 436, 448 (1900); *Ex Parte Young*, 209 U.S. 123, 183 (1908) (dissenting opinion). In fact the axiom of sovereign immunity was reemphasized as recently as *Parden v. Terminal Railroad of Alabama Docks Dept.*, 377 U.S. 184, 192 (1964).

If the California Court of Appeal's decision indeed rests on nothing more than the bald assertion that a sovereign state may be sued without her consent, no further argument is necessary to mandate reversal. *Hans v. Louisiana, supra; Cunningham v. Macon & B. R. Co., supra; Beers v. Arkansas, supra.* However, assuming *arguendo* that the opinion before the Court turned on the conclusion that Nevada had consented to suit in California, the question arises, from whence did such consent emanate.

II. THE STATES, BY ADOPTING THE CONSTITUTION, DID NOT CONSENT TO BE SUED BY INDIVIDUALS IN THE COURTS OF SISTER STATES.

This Court has expressly held that adoption of the Constitution does not constitute consent to be sued in the courts of sister states. *In Re New York*, 256 U.S. 490, 497 (1921); *Hans v. Louisiana, supra*, at 18. In fact this

Court has specifically held:

> "The right of individuals to sue a state, in either a federal or a state court cannot be derived from the Constitution or laws of the United States. It can come only from the consent of the state." *Palmer v. Ohio*, 248 U.S. 32, 34 (1918).

By ratifying the Constitution the States did not, then, consent to be sued in tort actions in the trial courts of sister states. Quite the contrary, by ratifying the Constitution the states specifically retained their sovereign immunity from suit in the courts of sister states.

III. THE CONSTITUTION, OTHER THAN AS SPECIFICALLY PROVIDED THEREIN, PROHIBITS SUITS AGAINST UNCONSENTING STATES.

The Constitution does not authorize individual citizens to call an unconsenting state to the trial bar of a sister state! The only expression with respect to a state being called into any court by individual citizens is found in the Eleventh Amendment and that expression is adamant support for the axiom that no state may be sued in the courts of sister states without her permission.

Nor may any serious argument be

advanced to assert that at the time the Constitution was adopted the States did not possess sovereign immunity from unconsenting suit. The statements of the founding fathers at the time of adoption clearly reveal that such immunity existed.

Hamilton, in response to the proposition that adoption might result in a state being sued in Federal Court wrote:

> "It is inherent in the nature of sovereignty not to be amenable to the suit of an individual *without its consent*. This is the general sense, and the general practice of mankind; and the exemption, as one of the attributes of sovereignty, is now enjoyed by the government of every State in the Union." *The Federalist*, No. 81, at 487 [emphasis in original].

James Madison stated:

> "It is not in the power of individuals to call any state into court." *Elliott's Debates*, p.533.

John Marshall reacted even stronger to the supposition that an individual could bring suit against an unconsenting State by pronouncing:

> "It is not rational to suppose that the sovereign power should be dragged before a court." *Elliott's Debates*, p.555.

Indeed the Court in *Hans v. Louisiana, supra*, at 16, observed that at the time of adoption:

> "The suability of a state, without its consent was a thing unknown to the law. This has been so often laid down and acknowledged by courts and jurists that it is hardly necessary to be formally asserted.
>
> * * *
>
> No sovereign state is liable to be sued without her consent."

The right to be immune from unconsented suit thus clearly existed at the time the union was formed.

The Tenth Amendment to the United States Constitution provides:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

In addition to constituting an unequivocal expression that the States

retained all powers not specifically surrendered, the Tenth Amendment is a limitation on the powers which may be exercised against the States. *Fry v. United States*, 421 U.S. 542, 547, n.7 (1975).

The power to be free from suit is a power reserved to the States and may be abrogated by a sister state only if the States are free to interact under the law of independent sovereign nations. This they may not do.

Article IV, Section 1 of the United States Constitution, the Full Faith and Credit Clause, is normally viewed as the Constitutional provision for the enforcement of foreign judgments. However, the clause serves the additional and more important function of altering the status of the individual states as independent foreign sovereignties, thereby making each an intregal part of a single nation. *Sherrer v. Sherrer*, 334 U.S. 343, 355 (1948); *Order of United Commercial Travelers of America v. Wolfe*, 331 U.S. 586, 618 (1947); Such a basic alteration was accomplished by substituting a command in place of the principles of comity. *Estin v. Estin*, 334 U.S. 541, 545, 546, (1948).

By prohibiting the States from treating each other as independent nations, the Full Faith and Credit Clause constitutes a verbalization of the concept of federalism upon which our Nation is founded. As early as Mr. Justice Iredell's dissent in *Chisholm v.*

Georgia, 2 U.S. 419 (1793) it was acknowledged that under the Federal system, the principles applicable under the Law of Nations offer little if any assistance in ascertaining the relationship between states. In language fully applicable to this case, Mr. Justice Iredell stated:

> "[S]ince unquestionably the people of the United States had a right to form what kind of union, and upon what terms they pleased, without reference to any former examples. If upon a fair construction of the Constitution of the United States, the power contended really exists, it undoubtedly may be exercised, though it be a power of the first impression. If it does not exist, upon that authority, ten thousand examples of similar power would not warrant its assumption. *Chisholm v. Georgia, supra,* at 449 (dissenting opinion).

Similarly, if the power of an individual to call an unconsenting state into the courts of a sister state exists under our Federal system of government, then, it would be incumbent on this Court to sustain the opinion of the California Court of Appeal, though it be an opinion unique to the heretofore accepted

concept of relations between states.[1] However, as set forth above, the power of an individual to drag an unconsenting state before *any court* in this country simply does not exist.

IV. NEVADA DID NOT CONSENT TO SUIT BY PERFORMING GOVERNMENTAL ACTIVITIES IN CALIFORNIA.

A possible basis for the opinion of the California Court of Appeal, is that merely by allowing a state owned vehicle to be driven on California highways, Nevada consented to be sued in California tort actions. The California Supreme Court in the decision deemed controlling by the California Court of Appeal, *Hall v. University of Nevada, supra,* placed great reliance on the case of *Parden v. Terminal Railroad of Alabama State Docks Dept., supra.* Apparently the California Supreme Court felt that *Parden* was support for the proposition that States consent to suit when they enter the borders of sister states. Such reliance was entirely misplaced.

1/ The uniqueness of the California Supreme Court holding in *Hall v. University of Nevada, supra,* which was followed by the Court of Appeal below, has already been the subject of one informative law review. 63 Calif. L. Rev. 1144 (1975).

Parden held that when a state affirmatively chooses to enter a sphere over which the Constitution grants the Federal government regulatory authority, such state consents to suit pursuant to the granted regulatory authority. In the words of the Court:

> "It remains the law that a state may not be sued by an individual without its consent. Our conclusion is simply that Alabama, when it began operation of an interstate railroad approximately 20 years after the enactment of the FELA, necessarily consented to such suit as was authorized by that Act. By adopting and ratifying the Commerce Clause, the States empowered Congress to create such a right of action against interstate railroads; by enacting the FELA in the exercise of its power, Congress conditioned the right to operate a railroad in interstate commerce upon amenability to suit in federal court as provided by the Act; by thereafter operating a railroad in interstate Commerce, Alabama must be taken to have accepted that condition and thus to have consented to suit." *Parden, supra,* at 192.

The decision in *Parden* is entirely consistent with the doctrine that the

individual states are immune from suit except where there has been a waiver of such sovereignty in the Constitution.

Moreover, the holding of *Parden* is limited by the prohibition against exercising the power thus granted in a manner which operates to directly displace the states' right to structure integral operations in areas of traditional governmental functions or in a manner which would impair the states' ability to function effectively within the federal system. *National League of Cities v. Usery,* 426 U.S. 833 (1976). The thrust of the decision of the California Court of Appeal unquestionably displaces Nevada's right to structure the internal operation of her government by determining for Nevada if and when monies are to be appropriated to guard against judgments assessed against her treasury. In addition, the decision patently effects Nevada's ability to function within the Federal system by admonishing Nevada that necessary governmental interaction must be undertaken at Nevada's risk and subject to the whims of the California legislature and courts.

Does it suppose too much to assume that a logical extension of the California Court of Appeal's decision could result in Nevada being called to answer in California courts for activities which occurred entirely within Nevada but which, in the opinion of some California citizen, have an effect in California. After all, California's

"long arm" statute reaches those with sufficient contacts within California and, in the words of the California Supreme Court, echoed by the California Court of Appeal:

> "We have concluded that sister states who engage in activities within California are subject to our laws with respect to those activities and are subject to suit in California courts with respect to those activities." *Hall v. University of Nevada, supra,* at 8 Cal.3rd p. 524; Opinion of the California Court of Appeal, Appendix to Petition for Writ of Certiorari, p. iv.

In light of recent decisions greatly expanding the jurisdiction of California courts over non-residents it is obviously not illogical to conclude that unless the opinion of the Court of Appeals is reversed, Nevada will soon be called to the California bar under the California "long arm statute".[2]

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[2] "Two recent California Supreme Court decisions highlight the extent by which California courts have drastically extended their jurisdiction. In *Bernard v. Harrah's Club,* 16 Cal.3rd. 313, 546, P.2d 719, 128 Cal.Rptr. 215 (1976) cert. denied 429 U.S. 859, the California Supreme Court held that Nevada tavern keepers

The California Courts reliance on *Parden v. Terminal Railroad, supra,* is thus erroneous. *Parden* stands for the proposition that where, by adopting the Constitution, the states have agreed to be subject to regulation with respect to particular activities, they impliedly consent to suit if they engage in such activities. The United States Constitution does not provide that States agree to subordinate themselves to sister states and to be subject to regulation by, or suit in, sister states.

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were subject to suit in California under California's judicially created dram shop doctrine when patrons served in Nevada were involved in accidents in California. The *Bernard* decision, which was founded on the premise that Harrah's advertised in California, was issued despite the fact that the Nevada Supreme Court in *Hamm v. Carson City Nugget,* 85 Nev. 99., 450 P.2d 358 (1969) had ruled that Nevada Tavern keepers were not subject to dram shop liability and the Nevada legislature had removed all criminal penalties on tavern keepers who served intoxicated patrons. In *Cornelison v. Chaney,* 16 Cal.3rd 143, 545 P.2d 264 (1976), the California Supreme Court ruled that a California trial court could exercise jurisdiction over an action arising out of a motor vehicle accident which occurred in Nevada on the theory that the defendant Nebraska resident routinely engaged in interstate commerce in

V. IF THE CALIFORNIA COURTS OBTAINED JURISDICTION PURSUANT TO NEVADA'S STATUTORY WAIVER, FULL FAITH AND CREDIT MUST BE GIVEN TO THE LIMITATION CONTAINED THEREIN.

The only conceivable manner by which the courts of California could have obtained jurisdiction is pursuant to Nevada's statutory waiver of immunity. When a State consents to suit, it may condition its consent on such modes and terms as it sees fit, *Great Northern Insurance Co., v. Read,* 322 U.S. 47 54, 55 (1944); *Beers v. Arkansas, supra,* p.529. Nevada exercised this right and limited its consent, first, to courts of competent jurisdiction and, second, to recovery of $25,000.00 per claimant.[3].

The conclusion that a state has waived immunity and consented to suit is not one which will be lightly inferred.

California and "the accident happened not far from the California border, while defendant was bound for this state."

3/ At the time of the accident NRS 41.035 limited damages to $25,000 per claimant. The Section was amended in 1977 to increase liability to $35,000 per claimant.

Edelman v. Jordan, 415 U.S. 651, 673 (1974); *Petty v. Tennessee-Missouri Bridge Comm'n.,* 359 U.S. 275, 276 (1959). Consent will only be inferred after scrutiny of the entire waiver scheme to ascertain what consent was intended. *Chandler v. Dix,* 194 U.S. 590 (1904). The requirement for clearly expressed intent is fully applicable in determining whether a State intended to limit its consent to any particular courts. *Kennecott Cooper Corp. v. State Tax Comm'n.,* 327 U.S. 573 577, 578 (1945); *Great Northern Insurance Co. v. Read, supra,* at 54.

The venue provisions with respect to suits against Nevada, as they existed at the time the cause of action arose,[4]. provided:

> "NRS 13.025(1) Except as provided in subsection 2, any action or proceeding

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4/ NRS 13.025 was subsequently repealed and the statutory waiver scheme amended to read: "NRS 41.031(2): An Action may be brought under this section, in a court of competent jurisdiction of this state, against the State of Nevada, any agency of the state, or any political subdivision of the state. In an action against the state or any agency of the state, the State of Nevada shall be named as defendant, and the summons and a copy of the complaint shall be served upon the secretary of state.

against the State of Nevada shall be brought in a court of competent jurisdiction in Ormsby County.

(2) Any tort action against the State of Nevada which is based on the alleged negligence of a state officer or employee and in which the damages sought to be recovered are for physical injury or death may be brought in a court of competent jurisdiction in the county where the injury occurred.

That such statutorily expressed consent to suit was not intended to extend beyond the courts of Nevada is patently apparent. However, even assuming *arguendo* that the California courts obtained jurisdiction as a result of California's waiver, the Full Faith and Credit Clause demands that Nevada's limitation on recovery be applied.

This Court has previously addressed the question of whether a court may disregard the limitations and conditions that were contained in the foreign law which enabled the assumption of jurisdiction. Speaking for the Court in *Slater v. Mexican National R.R. Co.*, 194 U.S. 120 (1904), Mr. Justice Holmes observed:

"It seems to us unjust to allow a plaintiff to come here absolutely depending on the foreign law for the

foundation of his case, and yet to deny the defendant the benefit of whatever limitations on liability that law would impose." *Slater v. Mexican National R. R. Co., supra,* at 126.

Again speaking through Mr. Justice Holmes, the Court in *Davis v. Mills,* 194 U.S. 451 (1904) states:

"But, as the source of the obligation is the foreign law, the defendant, generally speaking, is entitled to the benefit of whatever conditions and limitations the foreign law creates." *Davis v. Mills, supra,* at 454.

In *Pearson v. Northeast Airlines, Inc.,* 307 F.2d 131 (2nd Cir. 1962), rehearing 309 F.2d 553, cert. denied 372 U.S. 912, the Second Circuit Court of Appeals was presented with a situation extremely analogous to the one now confronting the Court. In *Pearson* a domiciliary of the State of New York was killed in an accident in the State of Massachusetts. In the resulting wrongful death action the United States District Court sitting in New York refused to apply the $15,000.00 limitation on recovery contained in the Massachusetts wrongful death statute and instead applied New York's unlimited liability provisions. The Second Circuit Court of Appeals reversed, holding that the requirements of Full Faith and Credit mandated that the $15,000.00

limitation on liability contained in the Massachusetts wrongful death statute be applied. The basis for the decision was this Court's ruling in *Slater v. Mexican National R.R. Co., supra,* and *Davis v. Mills, supra.*

Slater v. Mexican National R.R. Co., supra and *Davis v. Mills, supra,* as followed in *Pearson v. Northeast Airlines Inc., supra,* are directly on point. Pursuant to such holdings Full Faith and Credit must be extended to the liability limitation contained in NRS 41.035(1) at the time of the accident.

CONCLUSION

The decision of the California Court of Appeal would have a devastating effect on the ability of the States to interact. States would be exposed to the potential of financial ruin each time it became necessary to send their officers or employees into sister states. Government officials could not attend planning or coordinating conferences nor even participate in interstate compact activities, nor could key officials or employees be trained at seminars or learning institutions in sister states without "unlocking" the treasury doors. Examples of necessary governmental activities which require interstate interaction are myriad. Indeed, a state could not send her attorneys into a sister state to defend litigation such as the present without the risk of ruinous financial exposure.

To avoid the risk of financial

embarrassment a state would be required to "wall" itself within its borders and forsake all external personal interaction with officials of sister states. Such a result would effectively return the States to the status of independent nations they "enjoyed" under the Articles of Confederation. This is the very evil which the Constitution was adopted to prevent.

The decision of the California Court of Appeals is a cancer, which, if not removed at the first opportunity, will devour the concept of Federalism on which our Union of States is founded. When the Constitution was adopted it was with the understanding that the independent States of the Confederation would thereby be molded into a Union of Sister States, each reserving the dignity and attributes of sovereignty not expressly granted to the Federal government. To paraphrase the Court in *Hans v. Louisana, supra,* 15, may we assume that the several states would have adopted the Constitution if it had contained a declaration that states agree to be subject to suits for monetary damages brought by individuals in the trial courts of sister states? The answer to such a supposition is self-evident.

Formation of the Union gave birth to a concept of Federalism unique to the known theories of government. The Articles of Confederation were cast away and the Bond of Sisterhood substituted in their place. The opinion of the California Court of Appeal, with its conclusion that the principles of comity should

once again rule, would leave the States free to exercise their whims and fancies in the treatment of their Sisters. Such a result is entirely incompatible with the principles of Federalism embodied in the Constitution and is, in fact, no more than a return to the Articles of Confederation.

Indeed, under the logic of the California court the Federal government would likewise be subject to tort actions based on California law when it engaged in activities on non-federal lands. The opinion of the California Court of Appeal should accordingly be reversed with directions to dismiss the action as against the State of Nevada and its agencies, or, in the alternative, to limit the judgment to the liability limit that was specified by NRS 41.035(1) at the time the accident occurred.

Dated this 14th day of July, 1978.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1977

No. 77-1337

UNIVERSITY OF NEVADA, and the STATE OF NEVADA,
Petitioners,

vs.

JOHN MICHAEL HALL, Minor by and Through His Guardian Ad Litem John C. Hall and PATRICIA HALL,
Respondents.

On Writ of Certiorari to the Court of Appeal of California, First Appellate District, Division Four

BRIEF OF RESPONDENTS

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BRIEF OF RESPONDENTS

OPINION BELOW

The Writ is addressed only to the California Court of Appeal, First Appellate District, Division Four to review the opinion of that Court. The opinion is set forth in full in the Petitioners' Appendix to their Petition for Certiorari.

PETITIONERS' CLAIM OF JURISDICTION

The only basis for jurisdiction of this Court claimed by the petitioners is 28 U.S.C. 1257(3) (page 2 of Brief). No other ground for invoking this Court's jurisdiction is given. A reading of the opinions of the California Courts and the previous Petition for Writ of Certiorari filed with this Court in 1973 demonstrates that:

(1) The validity of a treaty or statute of the United States is not drawn in question.

(2) No State statute is drawn in question on the ground of it being repugnant to the Constitution treaties or laws of the United States.

(3) No "title, right, privilege or immunity is specially set up or claimed under the Constitution, or statutes of the United States". Such a claim can only be made by citizens of the United States. The judgment against the Estate of the employee of the University of Nevada was not appealed.

STATUTORY PROVISIONS INVOLVED

Vehicle Code of State of California, Sections 17450 et seq.

Nevada Revised Statutes, 13.025.

QUESTIONS PRESENTED FOR REVIEW

1. Should this Court abolish the long standing rule of law that the Supreme Sovereign Power of a State is restricted to its territorial boundaries?

2. Should this Court extend the Sovereign Power of the State of Nevada into the territorial boundaries of the State of California and disregard the Supreme Power of Sovereignty held by the State of California within its own boundaries?

3. Should this Court disregard the principle that the State of California as Sovereign is parens patriae to its citizens and acts as guardian and trustee of its citizens and must protect its citizens from injuries and damages inflicted upon them by motor vehicles operated on its streets and highways?

4. Can any immunity be asserted by Nevada when no sovereign power exists?

5. The waiver of immunity in open Court by the Deputy Attorney General of the State of Nevada.

6. The acquisition of jurisdiction over the State of Nevada through the long arm statute of the State of California and through personal service of the agent of the State of Nevada in California.

7. Full faith and credit clause does not require California to apply Nevada's statutory limitation on monetary damages.

8. Full faith and credit clause requires Nevada to apply California law regarding wrongful, illegal and tortious conduct of their employee.

STATEMENT OF THE CASE

On May 13, 1968, the plaintiffs John Michael Hall, a minor child, and his mother were in an automobile

on a California highway in Placer County. The driver of the other vehicle involved in the collision drove across the dividing strip and collided head-on with the plaintiffs' vehicle. John Michael Hall, a minor child, sustained severe head injuries resulting in permanent brain injuries which have left him severely retarded and unable to care for himself or to ever be able to earn a livelihood. His mother, Patricia Hall, sustained severe physical injuries and severe emotional injuries requiring the care and treatment of psychiatrists.

The driver of the automobile which struck the plaintiffs' car violated the laws of the State of California which prohibit driving across a dividing strip and driving the wrong way on a divided highway. The conduct of the driver was both tortious and criminal in nature.

The driver of the automobile which struck the plaintiffs' car was an employee of the University of Nevada and was, at the time of the accident, returning to Nevada after having picked up some television parts.

The automobile which caused these injuries was a chattel owned by the State of Nevada and this chattel was voluntarily brought into the State of California by an employee of the University of Nevada. The driver of the automobile owned by the State of Nevada was killed in the accident. An estate proceeding was commenced for the deceased employee in the State of California and an Administrator of the Estate, a

resident of California, was appointed in the State of California. The plaintiffs filed suit against the Administrator of the estate of the deceased employee, the University of Nevada and the State of Nevada. Service of process on the State of Nevada and the University was accomplished under the long arm provision of the Motor Vehicle Code of the State of California (California Vehicle Code Sections 17450 et seq.).

Service of process on the Administrator was by personal service of the Summons and Complaint in California. The Supreme Court of the State of California in *Hall v. University of Nevada*, 8 Cal. 3d 522, 503 P.2d 1363, 105 Cal. Rptr. 355 (1972) cert. denied 414 U.S. 820 (1973) denied the motion to quash service filed by the defendants State of Nevada and University of Nevada. No such motion was made on behalf of the employee.

The State of Nevada also filed a Motion for Leave to File Complaint with the Supreme Court of the United States which was also denied by this Court.

A trial of the action took place in Alameda County and at the trial of the action the petitioners herein moved for an Order restricting the amount of damages to Twenty-five Thousand Dollars ($25,000.00) and for an instruction to the jury that they could only award Twenty-five Thousand Dollars ($25,000.00) per person. Both requests were claimed to be based on Article IV, Section 1 of the United States Constitution and were denied by the Trial Court.

At the time the above motions were made Michael Dyer, Deputy Attorney General of the State of Nevada, in open court waived any immunity to suit in California and consented to the jurisdiction of the California Court.

At page 10 of the Reporter's Transcript, lines 13 through 18:

> "The Court: Any response Mr. Dyer?
>
> Mr. Dyer: Your Honor, just simple statement. The whole issue is not whether Nevada is immune from suit. We admit that we are susceptible to suit in California. The question is whether full faith and credit must be given to our limitation."

The opinion of the Court of Appeal of the State of California, filed on October 24, 1977 (at page 3 of opinion) states:

> "Appellants' motion to limit damages was denied by the trial Court. The correction of this ruling is the sole issue on appeal."

At the time of oral argument before the Court of Appeal Mr. Dyer again agreed that the State of Nevada Court had obtained jurisdiction over the State of Nevada.

The verdict of the jury was against the petitioners herein and the Administrator of the estate of the deceased employee of the University of Nevada. The petitioners herein admitted that the deceased employee was in the course and scope of his employment at the time the accident occurred and are not disputing that their employee was negligent and that his negligence was a proximate cause of the injuries sustained by the respondents herein. However, no appeal was filed on behalf of the deceased employee and the judgment is now final, nor is any claim made that the Courts of the State of California did not acquire jurisdiction over said employee by service of process in the State of California on the Administrator of the estate of the deceased employee.

Petitioners filed a Petition for Hearing before the Supreme Court of the State of California which was denied. Petitioners then filed a Petition for Writ of Certiorari which was granted by this Court.

SUMMARY OF ARGUMENT

Petitioners present an argument which does not attempt to precisely define the real issues presented to this Court. The basic questions presented are the nature and extent of the sovereign power of a State—not whether it can be sued without its consent. Petitioners contend that sovereign immunity is an attribute of sovereignty and yet make no attempt to support their contention that the State of Nevada is somehow blessed with a species of extraterritorial sovereignty that is greater than that of the other States of this Union.

Petitioners fail to discuss the factual situation presented by this case of first impression. The discussion regarding the Tenth and Eleventh Amendments to the United States Constitution, while of historical interest, do not really assist the Court in making a judicial determination of the legal and factual issues involved.

This case involves tortious, wrongful and criminal acts committed by an operator of a vehicle in the State of California. The vehicle was brought into the State of California voluntarily and was operated by an employee of the University of Nevada. As a result of the wrongful conduct of the employee, serious and permanent brain injuries were sustained by John Michael Hall, a minor child and serious and permanent injuries were sustained by his mother, both residents of the State of California. The State of California has a special interest in exercising judicial jurisdiction over those who commit torts within its territory. This is because torts involve wrongful conduct which the State seeks to deter and against which it attempts to afford protection by providing that they be liable for all damages which are the proximate result of their torts. The State of California as supreme sovereign within its territorial limits is parens patriae to its citizens. The State of California is the guardian and trustee of its citizens.

The exercise of the responsibility has repeatedly been recognized by this Court. In upholding the long arm statute regarding nonresident motorists this Court has pointed out that automobiles are dangerous machines the use of which under the police powers of the State may be regulated with a view to the public safety and that a State may even exclude a nonresident from its highways until the formal appointment of a resident agent for the receiving of service of process has been made.

The sovereignty of Nevada cannot be extended into the territorial boundaries of the State of California. This is especially true when the activities of the State of Nevada in the State of California relate to the operation of an automobile on the highways of the State of California and the commission of a wrongful and tortious act by an employee of the University of Nevada while operating an automobile in the State of California. The State of Nevada came into the State of California and used its property (automobile) within this state. Under these circumstances the State of Nevada does not carry with it any of the attributes of sovereignty nor exercise of governmental power.

Nevada can make no valid argument that the delivery of television parts is an essential governmental function which would make its interest paramount to that interest of the State of California in regulating the use of its highways and vehicles on its highways and in protecting the safety and welfare of its citizens.

There is no constitutional grant or protection of any sovereign immunity of a State. The Eleventh Amendment is a restraint on the Federal judiciary and the Tenth Amendment merely states that powers not granted to the Federal Government are reserved by the States.

If one assumes that Nevada, under these facts, enjoys some sort of immunity from suit the question of a waiver of that immunity becomes important. The Court will readily see by reference to the Reporter's

Transcript of the proceedings in the Superior Court of Alameda County that the Deputy Attorney General of the State of Nevada waived any claim of immunity from suit in the Courts of California. A State may waive its immunity from suit or consent to be sued in other ways than by a formal declaration of consent in its constitution or statutes. The State of Nevada also waived any immunity it may claim to have by consenting to be sued and appointing the Director of Motor Vehicles of the State of California as their true and lawful attorney upon whom process could be served.

Petitioners also fail to mention in their brief that their agent and employee was served in the State of California by summons and complaint being served upon his administrator. Since the employee died in the State of California the administration of his estate was commenced in California. The State of Nevada can make no valid argument to the effect that the California Courts acquired jurisdiction over their agent and employee. The verdict of the jury was returned against both the employer, University of Nevada, and its employee. No appeal was ever filed on behalf of the employee and the judgment against the employee is now final. No writ is sought with this Court with reference to the judgment against the employee.

Petitioners assert that California Courts must give full faith and credit to the laws of the State of Nevada. This claim is without merit.

This Court has clearly established the legal principle that the Full Faith and Credit Clause does not enable the State of Nevada to legislate for the State of California and the Full Faith and Credit Clause does not enable Nevada to project its laws across state lines so as to preclude California from prescribing the legal consequences of acts committed within its territorial boundaries.

The accident in this case occurred in the State of California. The injured persons were residents of the State of California. The accident involved violations of the California Vehicle Code. The estate of the tortfeasor was commenced in California. The laws of the Sovereign State of California applied exclusively. The State of Nevada's laws have no application to this wrongful act.

Since each of the States of the Union has constitutional authority to make its own laws with respect to events within its borders the Full Faith and Credit Clause does not require it to substitute for its own law the conflicting law of another state, even though that law is controlling force in the Courts of that State with respect to the same persons and events.

Petitioner asserts that if the source of the obligation is the foreign law the defendant is entitled to the benefit of whatever condition and limitations the foreign law creates. The source of the obligation in this case is not the Nevada law. Respondents contend that the California law is the "source of the obligation" and not Nevada law. The wrongful and tortious conduct took place within the territorial

boundaries of the Sovereign State of California and the nature and extent of the liability for such wrongful conduct is governed by California statutes.

ARGUMENT AND CITATION OF AUTHORITY

I

SCOPE AND EXTENT OF NEVADA'S SOVEREIGN POWER

A state is a political community of free citizens, occupying a territory of defined boundaries. *Coyle v. Smith*, 221 U.S. 559, 55 L. Ed. 853, 31 S. Ct. 688; *Texas v. White*, 7 Wall. (U.S.) 700.

The state is supreme only within its territorial limits. *Parker v. Brown*, 317 U.S. 341, 87 L. Ed. 315, 63 S. Ct. 307.

Conversely the sovereign powers of a state do not extend beyond its boundaries. *State v. Hudson*, 231 Minn. 127, 42 N.W. 2d 546; 72 American Jurisprudence 2nd, p. 409 "States" § 4 Power as Territorially Limited.

The territorial limitation of the sovereign power of a state is illustrated by the lack of power of a state to project its laws across state lines so as to preclude another state from prescribing for itself the legal consequences of acts within it. *Pacific Employers Insurance Company v. Industrial Accident Commissioner*, 306 U.S. 493.

II

SCOPE AND EXTENT OF CALIFORNIA'S SOVEREIGN POWER

The sovereign power of the State of California, within its territorial limits, is supreme. The State of California as sovereign stands in the position of parens patriae, *Kentucky v. Indiana*, 281 U.S. 163, 74 L. Ed. 784, 50 S. Ct. 275; *New York Life Insurance Company v. Bangs*, 103 U.S. 435, 26 L. Ed. 580, that is guardian and trustee of its citizens; *Hudson County Water Company v. McCarter*, 209 U.S. 349, 52 L. Ed. 828.

The State of California has a special interest in exercising judicial jurisdiction over those who commit torts within its territory. This is because torts involve wrongful conduct which a state seeks to deter, and against which it attempts to afford protection by providing that a tortfeasor shall be liable for damages which are the proximate result of his tort. Witkin, *California Procedure*, Second Edition, Paragraph 6, Section 94 at page 619.

In order to fulfill its obligation as protector of its citizens from tortfeasors using the highways of the State, California enacted long arm statutes providing that the act of a nonresident using the highways constitutes an agreement on the part of the nonresident user to subject himself to the jurisdiction of the California Courts. As pointed out in *Kroll v. Nevada Industrial Corporation*, 65 Nevada 174, 191 P. 2d 889, quoting from *Hess v. Pawloski*, 274 U.S. 352, automobiles are dangerous machines, the use of which

under the police powers of the states may be regulated with a view to the public safety.

Kroll v. Nevada Industrial Corporation, supra, extended the act to the corporate owner as well as to the operator.

The State of California, as sovereign, must have the sovereign power to protect its citizens and this power cannot be abrogated by legislative acts which have no extraterritorial effect. The sovereign power of the State of Nevada concerning tortious acts which severely injure California citizens cannot be used to usurp the power and duty of the State of California to protect the safety and well-being of their citizens.

The sovereign power of the State of California also extends to the power to regulate and enact legislation dealing with the administration of estates of those persons who die in the State of California. The tortfeasor in this case, an employee of the University of Nevada, died in the State of California. The administration of his estate was instituted in accordance with the laws of the State of California and the administrator of his estate, a California resident, was personally served with summons and complaint.

III

IMMUNITY, BEING AN ATTRIBUTE OF SOVEREIGNTY, CANNOT BE ASSERTED WHEN NO SOVEREIGN POWER EXISTS

As pointed out by petitioners in their brief, immunity is an attribute of sovereignty. It is the position of

Respondents that immunity can not exist without the contemporaneous existence of sovereignty. None of the cases cited by Petitioners touch on the particular set of circumstances that exist in this case.

As demonstrated in the previous points of this argument the State of California, with reference to the tortious and wrongful conduct occurring within its territorial limits, possesses the supreme sovereign power. Nevada's position would appear to be that their sovereign power extends beyond their territorial boundaries and is superior to the sovereign power of the State of California with reference to tortious and wrongful conduct occurring on the highways of California. This position is not tenable and is not supported by any citations or legal authority. Historically the sovereign has that capacity only in relation to his own subjects and within his own realm.

IV

THE CONSTITUTION HAS NO PROHIBITION AGAINST SUITS AGAINST NON-CONSENTING STATES

There is absolutely nothing in the original Constitution nor in any of the amendments expressly sanctioning the doctrine of sovereign immunity. The Eleventh Amendment, despite the outcry about sovereign immunity and the sovereignty of states which preceded its adoption, does not constitute an exception. The Eleventh Amendment did impose a limitation upon the Federal Judicial power with respect to suits brought against the states in Federal courts

but did not write into the constitution any doctrine of sovereign immunity.

V

NEVADA, BY APPEARING IN COURT THROUGH ITS DEPUTY ATTORNEY GENERAL AND IN OPEN COURT ADMITTING THAT NEVADA WAS SUSCEPTIBLE TO SUIT IN CALIFORNIA COURTS, HAS WAIVED ANY PURPORTED IMMUNITY TO SUIT IN CALIFORNIA.

A state may waive its immunity from suit or consent to be sued in other ways than by a formal declaration of consent in its constitution or by statute (Volume 49 American Jurisprudence, States. Territories, etc., Section 96, p. 313).

It is also incumbent upon the Petitioners to assert any grounds upon which they are claiming immunity in order to protect their right to assert that defense on appeal.

The waiver of immunity by consenting to the jurisdiction of the California Courts is further evidenced by the fact that the Petitioners stated in their appeal that the sole issue presented was whether the trial judge erred in failing to instruct the jury on the statutory limitation of damages provided for by the Nevada statutes.

As stated by the Deputy Attorney General at page 10 of the Reporter's Transcript, lines 15 through 18:

> "The whole issue is not whether Nevada is immune from suit. We admit that we are susceptible to suit in California. The question is whether full faith and credit must be given to our limitations."

VI

LONG ARM STATUTE OF CALIFORNIA CONFERRED JURISDICTION OVER THE STATE OF NEVADA AND PERSONAL JURISDICTION WAS ACQUIRED OVER THEIR AGENT

The constitutionality of the statutes providing for service upon nonresident motorists has been upheld in *Hess v. Pawloski*, 274 U.S. 352, and in Nevada in the case of *Kroll v. Nevada Industrial Corporation*, 65 Nevada 174, 191 P. 2d 889.

In *Kroll v. Nevada Industrial Corporation, supra,* the Act was declared to apply to corporations as owners of vehicles as well as the driver. California has interpreted their statute to apply to corporate owners also.

This Court has held that governments are body politics and corporate in nature. *U.S. v. Maurice*, 2 Brock, and in *Morrell v. New York City Department of Social Services*, 38 C.C.H. Bul. B. 2730.

There is no logical reason why a distinction must be made between Nevada as the owner of a vehicle and any other corporation. No valid argument can be made that a State should be exempt from the provisions of a long arm statute of a sister State.

Nevada makes no attempt to refute the fact that personal jurisdiction in the State of California was obtained over their agent. The State of Nevada has admitted that this agent was in the course and scope of his employment. The State of Nevada is liable for the torts of their agents under the doctrine of Respondeat Superior. No motion was ever made to quash service of summons on their agent nor did the

State ever appeal the judgment rendered against their employee by the jury.

VII

FULL FAITH AND CREDIT CLAUSE DOES NOT REQUIRE THAT CALIFORNIA APPLY NEVADA'S STATUTE REGARDING LIMITATION ON MONETARY DAMAGES

This Court has already held that the Full Faith and Credit Clause does not enable one State to legislate for the other or to project its laws across state lines so as to preclude the other from prescribing for itself the legal consequences of acts occurring within it. *Pacific Employers Insurance Company v. Industrial Accident Commission,* 306 U.S. 493.

Petitioners cite *Great Northern Insurance Company v. Read,* 322 U.S. 47, *Edelman v. Jordan,* 415 U.S. 651, and *Pearson v. Northeast Airlines, Inc.,* 307 F.2d 131, in support of their argument that the State of California must give full faith and credit to the monetary limitation set forth in the Nevada Statutes.

The *Great Northern Insurance Company v. Read, supra,* merely held that a suit filed in the Federal Court against a State was barred by the Eleventh Amendment.

Edelman v. Jordan, supra, is again a case dealing with the Eleventh Amendment and is not applicable here.

Petitioners cite *Pearson v. Northeast Airlines, Inc.,* 307 F. 2d 131, as authority for their position that the

Full Faith and Credit Clause requires California courts to give extraterritorial effect to Nevada law.

In the *Pearson* case the plaintiff was seeking recovery under the Massachusetts wrongful death statute in a Federal court. In *Hall v. Nevada,* the plaintiff was seeking damages for injuries as provided for under the California laws. The court in *Hall v. Nevada* determined that Nevada did not have immunity from liability for its activities in California and therefore the extent to which Nevada waived immunity by statute and the extent to which it could or had limited the statutory waiver was immaterial.

Petitioners, at page 26 of their Brief, cite *Slater v. Mexican National R.R. Co.,* 194 U.S. 120, 126 (1904) cited in *Pearson v. Northeast Airlines, Inc., supra:*

> "It seems to us unjust to allow a plaintiff to come here absolutely depending on the foreign law for the foundation of his case, and yet to deny the defendant the benefit of whatever limitations on his liability that law would impose."

Plaintiffs in *Hall v. Nevada* are not "absolutely depending on the foreign law for the foundation of his case." The opposite is true. Plaintiffs served defendants under the provisions of California law and relied on the California laws governing the operation of motor vehicles on the California highways. No Nevada statute is relied upon by plaintiffs. The accident happened in California, on California highways, involving residents of California.

Petitioners at page 25 of their brief again refer to a citation from *Pearson,* which cites *Davis v. Mills,* 194 U.S. 451:

> "But, as the source of the obligation is the foreign law, the defendant generally speaking is entitled to the benefit of whatever condition and limitations the foreign law creates."

Petitioners' reliance on *Pearson* is misplaced. The Supreme Court of this State held that the Nevada law regarding immunity was not applicable to activities carried on by employees of the State, while operating motor vehicles on the highways of California. The "source of obligation" is not Nevada law, but California law.

CONCLUSION

Petitioners argue that "the decision of the California Court of Appeal would have a devastating effect on the ability of the States to interact" (page 26 of Petitioners' Brief).

This case is restricted to the use of an automobile in the State of California which was operated in a wrongful, illegal and tortious manner. Certainly one cannot argue that the interaction of states is dependent upon wrongful, tortious and illegal activities within a sovereign state. The only requirement to give complete protection would be an endorsement placed on the automobile insurance policy held by the State giving adequate insurance coverage when the State automobile is being operated outside of the

territorial limits of the State. Such insurance coverage would be at minimal cost and would protect the State when their vehicles are being operated outside of their State.

Petitioners refer to "unlocking the treasury doors". The purchase of the additional out of state coverage would not "unlock any treasury doors."

Petitioners refer to the decision of the California court as a "cancer" which will "devour the concept of Federalism."

It is the position of Respondents that this decision will strengthen the union of States and will protect the constitutional rights of citizens of each state to due process of law and that they be afforded a remedy for the tortious activities of persons coming into their State.

This decision strengthens the concept of sovereignty in that it upholds the supreme sovereign power of a State within its own territorial limits.

The concept of sovereign immunity has been much criticized as having no place in our society today. Care must be taken to clearly and distinctly define the scope of immunity and not to blindly expand the application of the doctrine. In the field of international law this Court has followed a course of limiting rather than expanding the doctrine of immunity. A ruling by this Court upholding the decision of the California court in this case will confirm the long standing rule of law that the sovereign powers of a State do not extend beyond its territorial limits and

that since immunity is an attribute of sovereignty there can be no immunity unless there is a clear showing of the existence of sovereign power.

The record is also clear that the State of Nevada consented to the juris iction of the California courts by the operation of a motor vehicle in the State, by waiving in open court any immunity from suit in the California court and the personal jurisdiction obtained over their agent.

This Court should affirm the judgment in this case.

Dated: August 11, 1978.

Respectfully submitted,
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FOR ARGUMENT

IN THE

Supreme Court of the United States

OCTOBER TERM 1977

No. 77-1337

UNIVERSITY OF NEVADA and the STATE OF NEVADA,

Petitioners,

v.

JOHN MICHAEL HALL, Minor by and Through His Guardian Ad Litem JOHN C. HALL and PATRICIA HALL,

Respondents.

REPLY BRIEF OF PETITIONER

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT DIVISION FOUR

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SUBJECT INDEX

TABLE OF AUTHORITIES CITED

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Respondents.

REPLY BRIEF OF PETITIONER

ARGUMENT AND CITATIONS OF AUTHORITY

I. NEVADA DID NOT WAIVE IMMUNITY BY ANY STATEMENTS MADE IN OPEN COURT

Respondents contend that Nevada, by appearing in the California trial courts through a Deputy Attorney General and specifically as a result of statements made by such Deputy Attorney General, has waived any immunity which may have existed. The statements of Deputy Attorney General Michael W. Dyer upon which respondent relies are set forth at page 10 of the

reporter's transcript lines 15 through 18. The statements are as follows:

> "The whole issue is not whether Nevada is immune from suit. We admit that we are susceptible to suit in California. The question is whether full faith and credit must be given to our limitations."

Respondents would have the court view these statements in a vacuum and conclude therefrom that the statements constitute a waiver of any immunity to which Nevada might otherwise have been entitled.

In reality the statements of Deputy Attorney General Dyer were made in arguing a motion requesting the trial court to limit damages as required by Nevada's statutory waiver of sovereign immunity. The motion to limit damages was made only after the State of Nevada had unsuccessfully attempted to have service of process quashed and after a lengthy jurisdictional battle with respect to trial of the action which had extended to this very court and which is addressed in the statement of the case in the brief of petitioner, p. 7.

The statements of Deputy Attorney General Dyer were made in rebuttal to Respondent and must be read in the context of the argument on the motion to limit damages. In his opening argument, Deputy Attorney General Dyer stated:

> "Clearly the State of Nevada has waived immunity. When we come to California we are subject to suit in California

> because and only because of our waiver of immunity." Reporter's transcript p. 7, lines 5-7.

The statements of Deputy Attorney General Dyer are thus entirely consistent with the position to which the State of Nevada has adhered from the time that this court denied certiorari in *Hall v. University of Nevada*, 8 Cal. 3rd 522, 503 P.2d 1363, cert. denied 414 U.S. 820 (1973), and Nevada was faced with trial in the courts of the State of California. That position is that the only manner in which the California courts could conceivably have obtained jurisdiction over the State of Nevada was pursuant to Nevada's statutory waiver of immunity and that full faith and credit therefore required that the entire statutory scheme, including the limitation of damages portions thereof, be given effect.

It is literally inconceivable that statements made in arguing that Nevada was subject to California's jurisdiction only because of her statutory waiver of immunity and that courts of California were required to recognize and adhere to Nevada's statutory waiver of immunity could be interpreted as a waiver of any immunity to which Nevada was entitled. The statements of Deputy Attorney General Dyer were made in an attempt to require the court to acknowledge Nevada's immunity and the viability of the statutory limitation placed thereon. No logical construction of these statements could be interpreted in any other manner.

Even assuming arguendo that the

bounds of logic were stretched to such an extent that the statements of Deputy Attorney General Dyer could be construed as an attempt to waive any immunity to which Nevada was entitled, no waiver could result. Deputy Attorneys General of the State of Nevada are alter egos of the Nevada Attorney General and as such are possessed only of such powers as the Attorney General is possessed. NRS 228.080(1). The powers of the Nevada Attorney General are statutory in nature. Nevada Constitution, Article 5, section 22. The power to waive Nevada's sovereign immunity is not included among such specified statutory powers. Only the legislature of the State of Nevada is empowered to waive Nevada's immunity from suit. Nevada Constitution, Article 4, section 22.

The case of *Ford Motor Co. v. Department of Treasury of State of Indiana*, 323 U.S. 459 (1945) is directly on point. In *Ford Motor Co.*, the court addressed the question of whether the Attorney General of the State of Indiana could waive the state's immunity from suit. After viewing the statutory powers conferred upon the Indiana Attorney General and the provisions for waiver of the state's immunity, the court concluded:

> "Since the state legislature may waive state immunity only by general law, it is not to be presumed in the absence of clear language to the contrary, that they conferred on administrative or executive officers discretionary power to grant

> or withhold consent in individual cases. Nor do we think that any of the general or special powers conferred by statute on the Indiana Attorney General to appear and defend actions brought against the state or its officials can be deemed to confer on that officer power to consent to suit against the state in courts wherein the state has not consented to be sued."

The Attorney General of Nevada has no power to consent to suit on behalf of the State of Nevada, that power being specifically granted to the Nevada legislature. The Nevada legislature in enacting the Nevada statutory waiver of sovereign immunity and specifying the conditions and limitations thereon, did not empower the Nevada Attorney General to consent to suit other than as specified by the legislature. Thus, any conceivable attempt at waiver of the limitation on liability contained in the Nevada statutory waiver of sovereign immunity by a Nevada Attorney General or one of his deputies would be without any legal efficacy. *Ford Motor Co. v. Department of Treasury of State of Indiana, supra* at 352.

II. NEVADA IS NOT ATTEMPTING TO EXPAND HER JURISDICTION INTO SISTER STATES.

Respondents contend that Nevada is attempting to extend her jurisdiction into her sister state of California. This contention is apparently based

on respondents' assumption that since states of the Union may legislate and exercise direct jurisdiction over citizens only within their boundaries, recognition of a state's sovereign status is limited by her geographical boundaries. Thus, respondents assert that by acknowledging the sovereign status of sister states when such sister states were performing governmental functions outside their geographical boundaries, a state would consent to a sister state exercising legislative and police power jurisdiction outside her boundaries.

The fundamental flaw in respondents' theory is that Nevada is not arguing that she has the power to exert legislative or police power jurisdiction over citizens of sister states. Nevada's position is simply that the states of the Union are not free to treat each other as independent nations but rather are required to at all times acknowledge the sovereign status of sister states. That is to say, states of the Union must at all times acknowledge the sovereign status of sister states. Respondents concede at page 14 of the Reply Brief that "immunity is an attribute of sovereignty." States, in acknowledging the sovereign status of their sister states must therefore necessarily acknowledge their sister states' immunity from suit.

Since states are required to acknowledge the sovereign status of sister states and immunity is an attribute of such sovereign status, it necessarily follows that the only manner in which the California courts could conceivably have obtained jurisdiction over the State of Nevada is

through Nevada's statutory waiver of immunity. If in fact the Nevada statutory waiver may be read as allowing California courts to obtain jurisdiction, the California courts, being entirely dependent on the Nevada statutory waiver for jurisdiction, must give effect to the entire statutory scheme, including the limitation on liability contained therein. *Davis v. Mills,* 194 U.S. 451, 454 (1904); *Slater v. Mexican National R.R. Co.,* 194 U.S. 120, 126 (1904); *Pearson v. Northeast Airlines, Inc.,* 307 F. 2d 131 (2nd Cir. 1962), rehearing 309 F. 2d 553, cert. denied 372 U.S. 912.

CONCLUSION

The statements of Deputy Attorney General Dyer, in arguing a motion to limit damages in the trial court, were clearly not intended as a waiver of any immunity nor could such statements constitute a waiver of immunity. Respondents' position that acknowledgment of the sovereign status of sister states results in sister states being authorized to exercise jurisdiction and legislate within the boundaries of other states is entirely erroneous. Indeed, the constitutional requirement of acknowledgment of the sovereign status of sister states does not enable any state to legislate for another state. The immunity of states from suit is not an immunity which arose through legislation but, as conceded by respondents, is an attribute of sovereignty inherent in the formation of states. Thus, states are not required to allow other states to legislate for the forum state's citizens but are simply required to acknowledge the status,

including the immunities and privileges attaching thereto, which sister states enjoyed as independent nations at the time that the Union of states was formed.

Dated this 20th day of October, 1978.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, JAMFS H. THOMPSON, Chief Deputy Attorney General, hereby certify that on the 20th day of October, 1978, I mailed by first class mail, postage prepaid, three copies to each of the following:

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